United States Court of Appeals

for the Second Circuit

APPENDIX

76-1328

ORIGINAL

B

P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

against

WILLIAM CAHN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.

Volume I—Pages 1a to 330.

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UNITED STATES COURT OF APPEALS
FILED
OCT 1 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

THE RECORD PRESS COMPANY, INC., New York, N. Y. 10007—212 732-6978—1976

(9770)

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1.	Claim	54	1983
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A.	Redeposit form	108	2010
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UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

- -X

UNITED STATES OF AMERICA,

Appellee,

-against-

WILLIAM CAHN,

Defendant-Appellant.

- -X

DOCKET ENTRIES.

DOCKET ENTRIES

PREAL 100 DOCKET **CLOSED** 75CR 645 COSTANTINO PLAINTIFF'S EXHIBIT JUDD J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: JAMES DRUKER
vs.	William Cahn
WILLIAM CAHN	278 Old Country Road
	Mineola, N.Y. 11501
	For Defendant:
	~~William Hundley~~
	~~375 Park Avenue~~
	~~New York, NY.~~
	~~Irwin Klein~~
	~~2 Park Ave -- NYC~~
	~~MU 3-0054~~

Did devise a scheme to defraud the County or the Task Force by means of false & fraudulent pretenses(claim for reimbursement for ~~expenses~~ etc. OF COSTS

	AMOUNT		CASH RECEIVED AND DISBURSED					
			DATE	NAME	RECEIVED		DISBURSED	
Fine,			7-6-76	Notice of appeal	5	—		
Clerk,								
Marshal,								
Attorney,								
Commissioner's Court,								
Witnesses,								

DATE	PROCEEDINGS
3-27-75	Before JUDD, J - Indictment filed.
9/9/75	Before COSTANTINO,J.- Case called- Deft and counsel William Hundley present= deft arraigned and eters a plea of not guilty- Trial set down for 2/2/76 at 10:00 A.M.
9-12-75	Notice of Appearance filed.
9/18/75	Notice of readiness for trial filed
10/3/75	75 M 1548 is inserted in CR file.
11-20-75	Notice of Appearance filed
11/26/75	Consent to Change attys filed.
12-5-75	Before DOOLING J - case called - deft ~~xxxx~~ moves for ~~extension of deadline~~ to file briefs from current date of Dec. 15 - opposed by the Govt. Motion denied - will allow supplemental afterward, but motions

DOCKET ENTRIES

75CR 645

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	still be filed by Dec. 15, 1975 - Govt must respond by Dec. 31. Jan. 7,		
	1976 at 4:30 PM for argument for motions.		
12/16/75	Notic e of motion to dismiss filed		
12-18-75	Letter filed received from Chambers dated Dec. 16, 1975		
	from Irwin Klein, Esq.counsel for deft.		
12/26/75	Copy of Letter from Irwin Klein, esq. dated 12/22/75 filed		
12/29/75	Copy of Letter from Irwin Klein dated 12/18/75 filed		
12/30/75	Govt's memorandum of law re:admissibility of evidence of similar acts fil		
12/30/75	Notice of govt's intention to use evidence of prior similar acts, etc. f		
12/30/75	Govt's memorandum of law in opposition to motion to dismiss and for sever		
	filed		
12/31/75	Copy of Letter to Irwin Klein from A.U.S.A. Druker filed		
1/5/76	Copy of Letter from Irwin Klein dated 12/31/75 filed		
1-6-76	Notice of Motion filed and Memorandum in support of motions		
	for dismissal, etc.		
1-7-76	Before DOOLING J - case called - motions to dismiss indictment or		
	sever counts dealing with false statements - motion argued - decision		
	reserved.		
1-8-76	Copy of voucher filed relating to count 7 of the indictment, etc.		
	(received from Chambers)		
1-8-76	Reply Memorandum filed in behalf of deft (received from Chambers &		
	retd to Chambers)		
1/9/76	Notice of motion for pre-trial conference and memorandum of law in support		
	filed		
1/9/76	Copy of letter from Irwin Klein dated 1/7/76 filed		
1-9-76	By DOOLING J - Memorandum and Order filed that on defts motion		
	count 7 is dismissed and counts 10 and 11 are severed for separate		
	trial and all the other motions included in defts motion of		
	Dec. 15 , filed Dec. 16, are denied.		
1/14/76	Letter from A.U.S.A. Druker dated 1/13/76 and enclosed sample letter filed		
1-15-76	Defendants Memorandum filed in support of motion for an order of		
	Protection as to the 5 purported similar Acts.		
1-15-76	Affidavit of William Cahn filed.		
1-15-76	Defts Memorandum filed in support of his motion for reargument, etc.		
1-19-76	Govts reply memorandum filed in support of the admissibility of		
	evidence of similar acts (retd to Chambers)		
1-16-76	Before DOOLING J - Case called - Discuss extension of bail etc. granted -		
	Atty to submit Order. Deft moves for reconsideration of motion to dismiss		

DOCKET ENTRIES

75 CR-645

CRIMINAL DOCKET

DATE	PROCEEDINGS
	mail fraud counts, etc. denied - for dismissal of the indictment; motion denied; discovery motionsdiscussed - contd to Jan. 21 at 9:15 am. (see calendar entry for details)
1-19-76	By Dooling J - Memorandum filed re pre tril conference of Jan. 16, 1976.
1/21/76	Before DOOLING,J.- Case called- discovery motions argued-motion granted and denied as indicated on the record
1/21/76	By DOOLING,J .- Order - motions as to discovery and to dismiss granted and denied as indica[illegible] in order
1/21/76	By DOOLING,J.- Order filed extending bail limits
1-22-	[illegible]eft's requests for additional items of discovery filed.
1-22-76	Deft's suggestions of corrections to grand jury minutes filed.
1-22-76	Deft s request for a Westbury case filed.
1-22-76	Deft's request to strike ffled.
1-22-76	By DOOLING, J. - Order on motions dtd 1-21-76 denying motion for a Westbury case & motion to strike, etc. filed(see order).
1/23/76	Before DOOLING,J.- Case called- pre trial conference held and concluded case adjd to 1/29/76 at 2:00 P.M. for pre-trial conference
1/27/76	Govt's memorandum in support of requests for discovery filed
1/27/76	Govt's memorandum in opposition to deft's motion for reconsideration of motion to dismiss
1/28/76	Before DOOLING,J.- Case called- pretrial conference held and concluded
1-29-76	Stenographers transcript filed dated Jan. 21, 1976
2/5/76	Stenographers Transcript dated 1/23/76 filed
2/9/76	Defts questions of prospective jurors filed
2/9/76	Govt's notice of appeal from order dismissing counts 7 filed
2/9/76	Docket entries and duplicate of notice of appeal mailed to c of a
2/9/76	By DOOLING,J.- Order filed as to disclosure to defense of certain evidence etc. filed
2/10/76	Deft's offer of proof regarding admission of certain evidence filed
2/9/76	Before DOOLING,J.- Case called- deft and counsel present- trial ordered and begun-jurors selected and sworn-trial contd to 2/10/76
2-11-76	Stenographers transcript filed dated Jan. 28, 1976.
2-10-76	Before DOOLING J - case called - deft & counsel I.Klein present - trial resumed - Govts opening - deft reserves opening - trial contd to 2-11-76.
2-11-76	Before DOOLING J - case called - deft & counsel present - trial resumed - trial contd to 2-13-76

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DOCKET ENTRIES

DATE	PROCEEDINGS
2/13/76	Before DOOLING,J-case called- deft and counsel present- trial resumed trial contd to 2/17/76 at 10:00 A.M.
2-17-76	Copy of Memorandum filed received from Chambers(retd as directed)
2-17-76	Govts Requests to Charge filed.
2-17-76	Before DOOLING J - Case called - deft & counsel I.Klein present - Trial resumed - Govt rests - deft moves for Judgment of Acquittal denied - deft moves that paragraph 4 of each count be stricked - denied; count 2 is ordered dismissed on joint motion of defense and the Govt - Agreed there is no evidence to support the allegations of para. 3 of count 7; deft moves to dismiss count 7 on the grounds that absent para.#3 is invalid -denied; deft moves to dismiss count 1 on the grounds that it is on the Sam Houston etc. denied; deft moves to dismiss count 5 - denied; renews earlier motion to dismiss - denied - trial contd to 2-18-76.
2-18-76	Memorandum filed received from Chambers (retd to Chambers as directed)
2-18-76	Before DOOLING J - case called - deft & counsel present - trial resumed - deft moves for declaration of a mistrial - motion denied - William Cahn, the defendant, sworn as a witness-examined - Alfred Robbins sworn as a witness for the deft-examined-Richard Gerstein sworn as a witness for the deft. Examined - Burton Roberts sworn as witness for the deft - examined. Trial contd to Feb. 19, 1976.
2-19-76	By DOOLING J - Order of sustenance filed.
2-19-76	Before DOOLING J - case called - deft & counsel present - trial resumed - Trial contd to 2-20-76.
2-20-76	Before DOOLING J - case called - deft & counsel present - trial resumed - defts moves for dismissal of the indictment etc. motion ruled untimely. Trial contd to 2-23-76.
2-20-76	By DOOLING J - Order of sustenance filed for Lunch (15 persons)
2-23-76	Memorandum filed receiveddfrom Chambers addressed to Irwin Klein retd as directed.
2-23-76	3 stenographers transcript filed (pgs 42 to 692)
2-23-76	Before DOOLING J - case called - deft & counsel present - trial resumed - trial contd to 2-24-76.
2-23-76	ByDOOLING J - Order of sustenance filed.(Lunch-15 persons)
2/24/76	Before DOOLING,J.- Case called- deft and counsel present- trial resumed deft rests- deft renews motion for verdict of acquittal - motion denied trial contd to 2/25/76
2/25/76	By DOOLING,J.- Order of sustenance filed
2/25/76	Letter from Herbert Gordon dated 2/21/76 filed

DOCKET ENTRIES

75 CR 645

CRIMINAL DOCKET

DATE	PROCEEDINGS
2-25-76	Defts requests to charge filed (received from Chambers & retd as directed) and Exceptions (In Part) to the Proposed Charge and Distinguishing Analysis of Citations Distributed by Court filed.
2-26-76	Mens Rea Issued filed (retd to Chambers as directed)
2-26-76	Notice of Appeal filed from Judge Doolings Order of 1-9-76 dismissing count 7 etc.
2-26-76	~~Docket Entries x mx dupicate x~~ of Record on Appeal certified and mailed to the Court of Appeals.
2/25/76	Before DOOLING,J.- Case called- deft and counsel present-govt rests deft rests-deft's motion for judgment of acquittal denied- trial contd to 2/26/76
2/25/76	By DOOLING,J.- Order of sustenance filed
2/26/76	Before DOOLING,J.- Case called- deft and counsel present- trial resumed govt sums up- deft sums up-jury retires to deliberate- trial contd to 2/27/76
2/26/76	By DOOLING,J.- Orders of sustenance(2) and Transportation(1) filed
2/27/76	Stipulation as to record on appeal filed
2/27/76	Before DOOLING,J- Case called- deft and counsel present-trial resumed deft's motionfor mistrial denied- jury reports disagreement- Court declares a mistrial-trial concluded- jury discharged- re-trial scheduled for 5/2/76
2/27/76	By DOOLING,J.- Two(2) orders of sustenance and air-conditioning filed
3/1/76	Stenographers Transcripts dated February 17,18,19 and 20 filed
3-8-76	Certified supplemental index to record on appeal mailed to the Court of Appeals.
3-9-76	Three Volumes of stenographers transcripts filed (pgs 1338 to 1766)
3/15/76	Acknowledgment received from court of appeals for receipt of record
3-18-76	By Dooling J - Order filed withdrawal of Notice of Appeal dated 2-6-76 from the order of the District Court entered on Jan. 9, 1976 dismissing count seven of the indictment.
3/19/76	BEFORE DOOLING,J.- SUPERSEDING INDICTMENT FILED
3-19-76	Before DOOLING, J. - Case called. Deft & counsel present. Deft arraigned. Deft stands mute and a plea of not guilty entered at the court's direction in the deft's behalf. Motions scheduled for 4-2-76. Trial scheduled for 5-3-76. Deft to execute a P.A.Bond with bail limits extended to continental U.S.
3-22-76	Stenographer's transcript dtd 1-16-76 filed.

BEST COPY AVAILABLE

DOCKET ENTRIES

DATE	PROCEEDINGS
3/26/76	Before PLATT,J.- Case called- deft and counsel present- case adjd to 4/16/ for all motions - adjd to 5/3/76 for trial
3-30-76	Notice Of motion filed for the disqualification of Hon.Thomas Platt,etc.
3-31-76	Deft's request to appear pro se filed.
3-31-76	Memorandum filed dated 3-30-76 received from Chambers to Chief Judge Mishler and forwarded to Judge Judd as directd.
3-31-76	Index to Record and supplemental index to record received from Court of Appeals - acknowledgment mailed to Clerk.
3-31-76	Memorandum filed dated Mar. 30, 1976 received from Chambers to Chief Judge Mishler and forwarded to Judd, J., as directed .
4/1/76	Certified copy of Judgment received from court of appeals and filed- dismissing notice of appeal
4-8-76	Notice of Motion filed for dismissal of the indictment; striking from Indictment 75 CR 645 S certain prejudicial surplusage; Inspection of Grand Jury Minutes; recognition of defts right to a speedy retrial of the Indictment at 75 CR 645 S
4/9/76	Before JUDD,J.- Case called- deft and counsel present- deft's motion to relieve Mr. Klein as counsel argued- motion granted- court grants permissic to deft Cahn to proceed pro se- case adjd to 4/16/76 at 10:00 A.M. for moti
4/16/76	Before JUDD,J.- Case called- deft pro se present- deft's motion for adjour ment of oral argument argued- motion granted- case adjd to 4/21/76 for moti
4/16/76	Govt's memorandum of law on superseding indictment filed
4/16/76	By JUDD,J.- Order filed that Irwin Klein is withdrawn as counsel for deft
4-20-76	Defts reply Memorandum filed in support of motion to dismiss the Indictment and other requested relief (forwarded to Chambers)
4/21/76	Before JUDD,J.- Case called- deft not present- counsel Neil Cahn present deft's motion to dismiss various counts in indictment argued- motion denie deft's motion to dismiss on grounds of double jeopardy argued- motion deni deft's motion to dismiss underlying indictment argued- motion denied- deft motion for inspection- argued- motion denied- deft's motion to dismiss on grounds of violation of speedy trial rule argued- motion denied- deft's motion for Westbury Trial argued- motion denied- with leave to renew if need arises for Westbury Transfer of case during course of trial- govt's motion to sequester jury argued- decision reserved- case adjd to 5/3/76 at 10:00 A.M.
4/30/76	Stenographers Transcript dated 4/21/76 filed
5-3-76	Before JUDD, J - case called - deft Pro se present with advisers Neil Cohn and Harold Bogin - trial ordered & BEGUN - Jurors selected & sworn - Govt c

DOCKET ENTRIES

CR 645
CRIMINAL DOCKET

DATE	PROCEEDINGS
	Deft pro se opens - Trial contd to May 4, 1976 at 10:00 am.
5-4-76	Before JUDD, J - case called - deft & advisers of counsel present - trial resumed - Trial contd to 5-5-76
5-5-76	Before JUDD, J - case called - deft pro se and advisers present - trial resumed - trial contd to May 6, 1976
5-6-76	Subpoena Duces Tecum filed received from Chambers directed to Attorney General ~~GRR~~ Edward Levi, ret. May 10, 1976
5-6-76	Before JUDD, J - case called - deft pro se & advisers present - trial resumed - Gov't rests - defts motion to dismiss argued - motion denied except as to count 45 which is dismissed on consent of both sides. Trial contd to May 10, 1976.
5/10/76	Before JUDD,J.- Case called- deft pro se and advisers present- trial resumed-trial contd to 5/11/76
5-11-76	Subpoena duces tecum (Hotel Sonesta) filed.
5-11-76	Before JUDD, J- Amendment of counts 1 and 2 in superseding ~~SUPERSEDING INDICTMENT FILED (S) ARRAIGNED RETURN~~ Indictment 75 CR 645(S) filed.
5/11/76	Before JUDD,J.- Case called- deft pro se and advisers present- trial resumed-trial contd to 5/12/76 at 10:00 A.M.
5-12-76	Before JUDD, J - case called deft pro se & advisers present - trial resumed - trial contd to May 13, 1976
5/13/76	Stenographers Tranecripts dated 5/4/76 and 5/5/76 filed
5/13/76	Before JUDD,J.- Case called- deft pro se and advisers present- trial resumed-trial contd to 5/17/76 at 2:15 P.M.
5-17-76	Before JUDD, J - case called - deft pro se & advisers present - trial resumed - deft rests - trial contd to May 19, 1976.
5-19-76	Before JUDD, J - case called - deft Pro se & advisers present - trial resumed - Govt opens on rebuttal - Govt rests on rebuttal - deft opens on Sur-Rebuttal - deft rests - both sides rest - deft renews all previous motions for Judgment of Acquittal- motions denied - trial contd to May 20, 1976 at 10:am.
5-20-76	Before JUDD, J - case called - deft pro se & advisers present - trial resumed - deft sums up - Govt sums up - Judge charges jury- alternates discharged - Order of sustenance signed - jury retires to deliberate at 4:10 PM. Jury excused for the night at 8:10 PM- trial contd to May 21, 1976 at 9:15 am.
5-21-76	Before JUDD, J - case called - deft ~~x~~ pro se and advisers present - trial resumed - Jury resumes deliberations at 9:am- Jury returns at 11:50 am and renders verdict of guilty as charged

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DOCKET ENTRIES

DATE	PROCEEDINGS
	in all counts - jury polled - jury discharged - trial concluded - defts motion to set aside verdict argued - motion denied - case adjd without date for sentencing.
5-21-76	13 stenographers transcripts filed (Dated Feb. 9, Feb. 26, Feb. 27, May 3, May 4, May 5(2) May 6, May 10, May 11, May 12, 13 and May 17)
5-21-76	Defts Memorandum of Law filed in support of motion to dismiss counts 1 and 2; Govts Trial Brief filed; Govts Memo of Law; Order of sustenance filed (all received from Chambers)
5-24-76	Form of Verdict filed (received from Chambers)
5-24-76	By JUDD, J- 5 orders of sustenance filed
6-3-76	Before JUDD, J - case called - deft not present - Neil Cahn and Irwin Klein advisers present - Conference held & concluded - adjd to Nov. 1, 1976 for trial in 75 CR 644 and 75 CR 645)
6/4/76	Stenographers Transcript dated 4/30/76 filed
6-7-76	Letter filed dated June 3, 1976 from William Cahn, Esq., waiving speedy trial rights etc.
6-25-76	Notice of motion filed for dismissal of the superseding indictment; for judgment of acquittal; and for new trial etc.
7-2-76	Before JUDD, J. - Case called. Deft pro se present. Deft renews previous motions to set aside jury verdict. Motions denied. - Deft sentenced to imprisonment for a period of 1 year and 1 day to run concurrent on counts 1 to 44. On count 45 imposition of sentence is suspended and deft is placed on unsupervised probation. Deft fined $2500 to run concurrent on all counts. Execution of sentence stayed 10 days pending filing of notice of appeal, and if notice of appeal is filed execution is stayed pending appeal. On motion of Asst US Atty Drucker the underlying indictment is dismissed. Deft advised of right to appeal.
7-2-76	Judgment and commitment and order of probation filed. Certified copies to Probation and U.S. Marshal.
7-6-76	Notice of appeal filed. Copy of appeal & copy of docket to C of A.
7/16/76	Stenogrpahers transcript dtd 7/2/76 filed.
7/21/76	Court Exhibit 1 & 2 filed.
7/21/76	Offer of Proof filed.
7/21/76	Memo to MISHLER, J. to DOOLING, J. filed. Dated 3/23/76.
7/26/76	Notice received from the court of appeals that the record by docketed & fi on or before 7/30/76. Filed.
7-26-76	Record certified and mailed to the court of appeals.
7-28-76	Acknwledgment received from court of appeals for receipt of record on appe

DOCKET ENTRIES

75 CR 645

CRIMINAL DOCKET

DATE	PROCEEDINGS
9-9-76	6 Stenographers transcripts filed (one dated May 3, 1976; 2 dated May 5, 1976; May 19, 1976; May 20, 1976 and one dated May 21,197
9-9-76	Supplemental Record on appeal certified and handed to L C HANNA for delivery to the court of appeals.

INDICTMENT

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
AUG 27 1975
TIME A.M.
P.M. X

TPP:JOD:ljl
F. 753,268

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

- against -

WILLIAM CAHN,

Defendant.

- - - - - - - - - - - - - - - - - - - X

I N D I C T M E N T

Cr. No.
(T. 18, U.S.C., §1341, §1001 and §1623)

75 CR 645

THE GRAND JURY CHARGES:

INTRODUCTION

1. At all times relevant herein, WILLIAM CAHN, the defendant was the District Attorney of the County of Nassau, State of New York (hereinafter referred to as the "County") and was also an officer or director of the National District Attorneys Association (hereinafter referred to as the "NDAA").

2. At all times relevant herein, the Office of the Comptroller of Nassau County (hereinafter referred to as the "County Comptroller") was responsible for reviewing and authorizing payment of reimbursement claims for expenses submitted by County officials. In accordance with Sections 369 and 577 of the New York State County Law, it was the policy of the County Comptroller that County officials should be reimbursed only for those expenses actually and necessarily incurred on behalf of the County, and that County officials should not receive double reimbursement.

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3. At all times relevant herein, the NDAA had in effect a by-law which provided, in pertinent part, as follows:

> "It shall be the policy of the corporation to minimize expenditures out of its general funds for travelling or other expenses incurred by officers or members relating to the corporation's business. No reimbursement for any expense shall be made to any officer or member where such officer or member can or may secure similar reimbursement from his governmental jurisdiction or any other similar source. The collection of reimbursement for the same expenses by any officer or member from both the corporation and any other source shall be grounds for automatic expulsion from membership of such officer or member."

4. At all times relevant herein, the National College of District Attorneys (hereinafter referred to as the "College") was affiliated with the NDAA; the National Legal Data Center on the Law of Obscenity (hereinafter referred to as the "Legal Data Center") was affiliated with the California Lutheran College; and the National Police Task Force (hereinafter referred to as the "Task Force") was affiliated with the National Advisory Commission on Criminal Justice Standards & Goals. The College, the Legal Data Center and the Task Force were subsidized either in whole or in part by the Law Enforcement Assistance Administration of the Department of Justice (hereinafter referred to as the "LEAA"). In

accordance with LEAA guidelines, the College, the Legal Data Center and the Task Force followed a policy that participants in LEAA funded programs not be reimbursed for their expenses where non-LEAA funds were available and that they not receive double reimbursement for those expenses.

COUNT ONE

1. From on or about the 16th day of June 1972, to and including the 9th day of July 1972, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County or the Task Force, and for obtaining money from the County or the Task Force by means of false or fraudulent pretenses or representations.

2. It was a part of the said scheme and artifice to defraud that, on or about June 28, 1972, the defendant caused to be delivered to the office of the County Comptroller, a claim for reimbursement for airfare expenses for a trip on behalf of the County to Los Angeles, California.

3. It was further a part of the said scheme and artifice to defraud that, on or about June 29, 1972, the defendant sent or cause to be sent in the United States mails to the Executive Director of the Task Force, a claim for reimbursement for the same airfare expenses.

4. It was further a part of the said scheme and artifice to defraud that, on or about July 6, 1972, the defendant caused a check to be sent to him in the United States mails from Los Angeles, California, to Mineola, New York, in the amount of $284.50, as payment of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the County Comptroller and the Task Force the fact that he was seeking and receiving the aforementioned double reimbursement, knowing that neither County Comptroller nor the Task Force would have permitted him to obtain double reimbursement. (Title 18, United States Code, Section 1341)

COUNT TWO

1. From on or about the 1st day of March 1973, to and including the 21st day of March 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County or the Legal Data Center, and for obtaining money from the County or the Legal Data Center by means of false or fraudulent pretenses or representations.

2. It was a part of the said scheme and artifice to defraud that, on or about March 19, 1973, the defendant caused to be delivered to the office of the County Comptroller, a claim for reimbursement for, among other things, airfare expenses for a trip on behalf of the County to Los Angeles, California.

3. It was further a part of the said scheme and artifice to defraud that, on or about March 4, 1973, the defendant sent or caused to be sent in the United States mails to the Project Director of the Legal Data Center, a claim for reimbursement for the same airfare expenses.

4. It was further a part of the said scheme and artifice to defraud that, on or about March 7, 1973, the defendant caused a check to be sent to him in the United States mails from Thousand Oaks, California, to Mineola, New York, in the amount of $521.00 as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the County Comptroller and the Legal Data Center that he was seeking and receiving the aforementioned double reimbursement, knowing that neither the County Comptroller nor the Legal Data Center would have permitted him to obtain double reimbursement. (Title 18, United States Code, Section 1341).

COUNT THREE

1. From on or about the 9th day of September 1973, to and including the 4th day of October 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended

to devise a scheme and artifice to defraud the County and for obtaining money from the County by means of false or fraudulent pretenses or representations.

2. It was a part of the said scheme and artifice to defraud that, on or about September 13, 1973, the defendant caused to be delivered to the office of the County Comptroller a claim for reimbursement for, among other things, airfare, hotel accommodations and taxi expenses incurred during a trip on behalf of the County to New Orleans, Louisiana.

3. It was further a part of the said scheme and artifice to defraud that, on or about September 13, 1973, the defendant sent or caused to be sent in the United States mails, a letter to the Executive Director of the American Society for Industrial Security (hereinafter the "Society") wherein the defendant claimed reimbursement for the same expenses mentioned in paragraph 2, above.

4. It was further a part of the said scheme and artifice to defraud that, on or about October 1, 1973, the defendant caused the Society to send a check to him in the United States mails from Washington, D.C. to Mineola, New York, as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from the County Comptroller the fact that he was seeking and receiving the aforementioned

double reimbursement, knowing that the County Comptroller would have permitted him to obtain double reimbursement. (Title 18, United States Code, Section 1341).

COUNT FOUR

1. From on or about the 23rd day of November 1973, to and including the 6th day of December 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County or the College and for obtaining money from the County or the College by means of false or fraudulent pretenses or representations.

2. It was part of the said scheme and artifice to defraud that, on or about November 27, 1973, the defendant caused to be delivered to the Office of the County Comptroller, reimbursement claim for, among other things, expenses for airfare and hotel accommodations claimed to have been incurred by an Assistant District Attorney on the defendant's staff while on a trip on behalf of the County to San Antonio, Texas.

3. It was further a part of the said scheme and artifice to defraud that, on or about November 27, 1973, the defendant sent or caused to be sent in the United States mails a letter to the Acting Dean of the College, wherein the defendant claimed reimbursement for the same expenses mentioned in paragraph 2, above.

4. It was further a part of the said scheme and artifice to defraud that, on or about December 3, 1973, the defendant caused the College to send a check to him in the United States mails, from Houston, Texas, to Mineola, New York, as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the Comptroller and the College the fact that he was seeking and receiving the aforementioned double reimbursement, knowing that neither the County Comptroller nor the College would have permitted such double reimbursement. (Title 18, United States Code, Section 1341).

COUNT FIVE

1. From on or about the 9th day of December 1973, to and including the 20th day of December 1973, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County or the College and for obtaining money from the County or the College by means of false or fraudulent pretenses or representations.

2. It was a part of the said scheme and artifice to defraud that, on or about December 11, 1973 and December 17, 1973, the defendant caused to be delivered to the office of the County

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Comptroller reimbursement claims for, among other things, expenses for airfare and hotel accommodations claimed to have been incurred

by himself and an Assistant District Attorney on the defendant's staff during a trip on behalf of the County to Atlanta, Georgia.

3. It was further a part of the said scheme and artifice to defraud that, on or about December 11, 1973, the defendant sent or caused to be sent in the United States mails, a letter to the Acting Dean of the College, wherein the defendant claimed reimbursement for the same expenses mentioned in paragraph 2, above.

4. It was further a part of the said scheme and artifice to defraud that on or about December 18, 1973, the defendant caused the College to send a check to him in the United States mails, from Houston, Texas, to Mineola, New York as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the County Comptroller and the College the fact that he was seeking and receiving the aforementioned double reimbursement, knowing that neither the County Comptroller nor the College would have permitted him to obtain double reimbursement. (Title 18, United States Code, Section 1341)

INDICTMENT

COUNT SIX

1. From on or about the 9th day of March 1974, to and including the 18th day of May 1974, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County or the NDAA's National Center for Prosecution Management (hereinafter referred to as the "Center") and for obtaining money from the County or the Center by means of false or fraudulent pretenses or representations.

2. It was part of the said scheme and artifice to defraud that, on or about March 20, 1974, the defendant caused to be delivered to the office of the County Comptroller, a claim for

reimbursement for, among other things, airfare expenses claimed to have been incurred by him while attending a "Board Meeting" of the Center in Mexico, on behalf of the County.

3. It was further a part of the said scheme and artifice to defraud that, on or about March 25, 1974, the defendant sent or caused to be sent in the United States mails, a claim to the Center, wherein the defendant claimed reimbursement for the same airfare expenses.

4. It was further a part of the said scheme and artifice to defraud that on or about May 16, 1974, the defendant caused the NDAA to send a check to him in the United States mails, from Chicago, Illinois, to Mineola, New York as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the County Comptroller and the Center the fact that he was seeking and receiving the aforementioned double reimbursement, knowing that neither the County Comptroller nor the Center would have permitted him to obtain double reimbursement. (Title 18, United States, Code, Section 1341)

COUNT SEVEN

On or about the 25th day of March 1974, in the Eastern District of New York, WILLIAM CAHN, the defendant, wilfully and knowingly falsified a material fact in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, in that he falsely certified and stated to the National Center for Prosecution Management, an LEAA funded organization, that he was not receiving any other reimbursement for a $246.80 claim for airfare, expenses whereas, as he then well knew, he had, on or about March 20, 1974, submitted a claim to the Comptroller of Nassau County, New York, in which he sought and for which he

received reimbursement in the same amount for the same airfare expense. (Title 18, United States Code, Section 1001)

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COUNT EIGHT

1. From on or about the 1st day of April 1974, to and including the 20th day of April 1974, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County or the Legal Data Center and for obtaining money from the County or the Legal Data Center by means of false or fraudulent pretenses or representations.

2. It was a part of the said scheme and artifice to defraud that, on or about April 4, 1974, the defendant caused to be delivered to the office of the County Comptroller, a reimbursement claim for, among other things, expenses for airfare and hotel accommodations claimed to have been incurred by him while on a trip on behalf of the County to Washington, D.C.

3. It was further a part of the said scheme and artifice to defraud that, on or about April 4, 1974, the defendant sent or caused to be sent in the United States mails a letter to the Project Director of the Legal Data Center, wherein the defendant claimed reimbursement for the same expenses mentioned in paragraph 2, above.

4. It was further a part of the said scheme and artifice to defraud that, on or about April 7, 1974, the defendant caused the Legal Data Center to send a check to him in the United States

mails, from Thousand Oaks, California, to Mineola, New York, as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the County

Comptroller and the Legal Data Center the fact that he was seeking and receiving the aforementioned double reimbursement, knowing that neither the County Comptroller nor the Legal Data Center would have permitted such double reimbursement. (Title 18, United States Code, Section 1341)

COUNT NINE

1. From on or about the 10th day of November 1974, to and including the 30th day of November 1974, both dates being approximate and inclusive, within the Eastern District of New York and elsewhere, WILLIAM CAHN, the defendant, devised and intended to devise a scheme and artifice to defraud the County and the College and for obtaining money from the County and the College by means of false or fraudulent pretenses or representations.

2. It was a part of the said scheme and artifice to defraud that, on or about November 14, 1974, the defendant caused to be delivered to the office of the County Comptroller, a claim for reimbursement for, among other things, airfare expenses claimed

to have been incurred by himself and an Assistant District Attorney on the defendant's staff during a trip on behalf of the County to Chicago, Illinois.

3. It was further a part of the said scheme and artifice to defraud that, on or about November 14, 1974, the defendant sent or caused to be sent in the United States mails, a claim to the College, wherein the defendant claimed reimbursement for the same airfare expenses.

4. It was further a part of the said scheme and artifice to defraud that, on or about November 27, 1974, the defendant caused the College to send a check to him in the United States mails, from Houston, Texas, to Mineola, New York, as payment, among other things, of the claim mentioned in paragraph 3, above.

5. It was further a part of the said scheme and artifice to defraud that the defendant concealed from both the

County Comptroller and the College the fact that he was seeking and receiving the aforementioned double reimbursement, knowing that neither the County Comptroller, or the College would have permitted such double reimbursement. (Title 18, United States Code, Section 1341)

COUNT TEN

On or about the 21st day of February 1975, in the Eastern District of New York, WILLIAM CAHN, the defendant, having taken an oath that he would testify truly before a duly empanelled

INDICTMENT

Grand Jury of the United States of America, did wilfully and knowingly and contrary to said oath, state material matters which he knew to be false, that is to say:

1. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere violations of the laws of the United States by the defendant WILLIAM CAHN and others, to wit, use of the United States mails, in furtherance of a fraudulent scheme, in violation of Section 1341, Title 18, United States Code.

2. It was material to the investigation then being conducted by the Grand Jury to determine whether or not WILLIAM CAHN, in the years 1970-1974, while District Attorney of Nassau County, New York, has sought and received reimbursement from the County for funds which he had expended in payment of hotel, airfare, or food bills for friends or social guests whom he had entertained while travelling outside of the State of New York.

3. At the time and place alleged in paragraph one herein, WILLIAM CAHN appeared as a witness before the aforesaid Grand Jury and then and there being under oath, testified falsely before the Grand Jury with respect to the aforementioned matters, as follows:

"Q. Now, Mr. Cahn, while we are on this area, and I will ask--and this is a delicate area--just briefly, were there occasions on various trips out West where you had social guests for dinner?

A. Yes.

Q. And did you ever bill the County for any of these guests?

A. No.

Q. Whether male or female?

A. No, those social guests also included my son, my brother-in-law on occasion, my wife, and--

Q. All right.
Generally speaking, I may have asked this, did you bill the County for these individuals?

A. No.

Q. Hotel, airfare or meals?

A. No, no way, sir.

Q. Were any of your trips solely for the purpose of meeting any friends or social guests?

A. No way, sir.

Q. Or at least none that you billed the County for, is that correct?

A. Any trip that I went for a social purpose was not billed to the County."

* * * *

4. The aforesaid testimony of WILLIAM CAHN, as he then and there well knew and believed, was not true in that he had, during the years 1970-1974, sought and received reimbursement from Nassau County for funds which he had expended in payment of hotel, airfare, or food bills for friends or social guests whom he had entertained while travelling outside of the State of New York.

(Title 18, United States Code, Section 1623)

COUNT ELEVEN

On or about the 21st day of February 1975, in the Eastern District of New York, WILLIAM CAHN, the defendant, having taken an oath that he would testify truly before a duly empanelled Grand Jury of the United States of America, did wilfully and knowingly and contrary to said oath, state material matters which he knew to be false, that is to say:

1. At the time and place aforesaid, the Grand Jury was conducting an investigation to determine whether there had been committed in the Eastern District of New York and elsewhere violations of the laws of the United States by the defendant WILLIAM CAHN and others, to wit, use of the United States mails in furtherance of a fraudulent scheme, in violation of Section 1341, Title 18, United States Code.

2. It was material to the investigation then being conducted by the Grand Jury to determine whether or not WILLIAM CAHN had ever billed Nassau County for airfare and hotel expenses which he knew had been provided to him on a complimentary or free basis.

3. At the time and place alleged in paragraph one herein, WILLIAM CAHN appeared as a witness before the aforesaid Grand Jury and then and there being under oath, testified falsely before the Grand Jury with respect to the aforementioned matters as follows:

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* * * *

"Q. To the best of your recollection, did you ever bill the County for any airfare or hotel room that you received complimentary or free?

In other words, on any trips where you given either free airfare or free hotel, did you ever turn around and bill the County for either of those items?

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A. No, Mr. Druker, to the best of my knowledge, it never happened, and if it did, it is a sheer mistake. I would not do it."

* * * *

The aforesaid testimony of WILLIAM CAHN, as he then and there well knew and believed, was not true in that, he had, on occasion, billed Nassau County for airfare and hotel expenses which he knew had been provided to him on a complimentary or free basis. (Title 18, United States Code, Section 162?)

A TRUE BILL.

FOREMAN

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

INDICTMENT

Form DJ-195
(Ed. 2-7-66)

No. _____

UNITED STATES DISTRICT **COURT**

EASTERN *District of* NEW YORK

CRIMINAL *Division*

THE UNITED STATES OF AMERICA

vs.

WILLIAM CAHN,

Defendant.

INDICTMENT

(Title 18, United States Code, Sections 1341 and 1623)

A true bill,

Joseph Lombardo

Foreman.

Filed in open court this _____ *day*

of _____, *A. D. 19*____

_____

Clerk.

*Bail, $*_____

_____

J.O. Druker, AUSA
596-5741/5542

GPO 902-487

SUPERSEDING INDICTMENT.

ERK:JOD:srt
F. #761282

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
MAR 19 1976
TIME A.M.
P.M.

75 CR 645 (S)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA

- against -

WILLIAM CAHN,

Defendant.

- -x

SUPERSEDING INDICTMENT

Cr. No. 75 CR 645(S)
(T. 18, U.S.C., §2)
(T. 18, U.S.C., §1001)
(T. 18, U.S.C., §1341)

THE GRAND JURY CHARGES:

INTRODUCTION

At all times relevant herein, WILLIAM CAHN, the defendant, was the District Attorney of the County of Nassau, State of New York (hereinafter referred to as the "County"), and was also an officer, director, member, regent, or consultant for the following organizations: The National District Attorneys Association (hereinafter referred to as the "NDAA"); the National College of District Attorneys (hereinafter referred to as the "College"); the National Police Task Force of the National Advisory Commission on Criminal Justice Standards and Goals (hereinafter referred to as the "Task Force"); the Arizona County Attorneys Association (hereinafter referred to as "Arizona Association"), the American Society for Industrial Security (hereinafter referred to as the "Society"); and the National Center for Prosecution Management (hereinafter referred to as the "Center").

SUPERSEDING INDICTMENT

COUNT ONE

On or about the 16th day of November 1974, within the Eastern District of New York, WILLIAM CAHN, the defendant, did wilfully and knowingly make and cause to be made a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, by stating falsely, in an application for reimbursement for $142.73 in airfare expenses filed with the National College of District Attorneys, that he was not receiving any reimbursement from any other source for the aforesaid expenses and that no other funds were available to reimburse him for that expense. The National District Attorneys Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA. (Title 18, United States Code, Section 1001)

COUNT TWO

On or about the 16th day of November 1974, within the Eastern District of New York, WILLIAM CAHN, the defendant, did wilfully and knowingly caus , counsel and induce Joseph E. Spinnato, an Assistant District Attorney on his staff, to make a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, by causing, counseling and inducing Joseph E. Spinnato to state falsely, in an application for reimbursement for $142.73 in airfare expenses

filed with the National College of Attorneys, that Joseph E. Spinnato was not receiving any reimbursement from any other source for the aforesaid expense and that no other funds were available to reimburse Joseph Spinnato for that expense. The National District Attorneys Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA. (Title 18, United States Code, Sections 2 and 1001)

COUNT THREE

On or about the 25th day of March 1974, within the Eastern District of New York, WILLIAM CAHN, the defendant, did wilfully and knowingly make and cause to be made a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, by stating falsely, in an application for reimbursement for ~~$224.80~~ 246 pc in airfare expenses filed with the National Center for Prosecution Management, that he was not receiving dual compensation for the aforesaid expenses. The National Center for Prosecution Management was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA. (Title 18, United States Code, Section 1001)

SUPERSEDING INDICTMENT

COUNTS FOUR TO TEN

On or about the following dates, within the Eastern District of New York, WILLIAM CAHN, the defendant, did wilfully and knowingly conceal and cause to be concealed material facts in matters within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), by submitting to the various LEAA funded organizations listed below the following claims for travel expenses to be paid out of funds provided by the LEAA. The claims failed to disclose the material fact that WILLIAM CAHN, the defendant, was also being reimbursed for the aforesaid travel expenses by Nassau County. (Title 18, United States Code, Section 1001)

COUNT	ORGANIZATION	DATE OF CLAIM
4	NDAA	May 17, 1971
5	Center	June 4, 1973
6	Center	October 15, 1973
7	Task Force	August 7, 1972
8	Task Force	December 5, 1972
9	Task Force	November 6, 1972
10	Arizona Association	February 28, 1974

COUNTS ELEVEN THROUGH FORTY-SIX

1. From on or about the 14th day of September, 1969 to the 30th day of November, 1974, both dates being approximate and inclusive, within the Eastern District of New York, WILLIAM CAHN, the defendant, did devise and intend to devise a scheme to obtain

money, from the organizations and associations set forth below, by the false and fraudulent pretense of sending to them claims for reimbursement of travel expenses and accommodations which WILLIAM CAHN, the defendant, was concurrently causing the County to pay upon separate claims submitted by him.

2. It was a part of the scheme to obtain money by false pretenses that each of the claims was not a true claim for

reimbursement of travel expenses, all of which were paid for by Nassau County. Instead, they were a device for obtaining money, from the organizations and associations set forth below, which monies WILLIAM CAHN, the defendant, would be able to and did expend for purposes unrelated to the affairs and activities of the aforesaid organizations and associations.

3. It was a part of the scheme to obtain money by false pretenses that WILLIAM CAHN, the defendant, did not disclose to the above named organizations and associations the fact that the aforesaid claims included requests for reimbursement for travel expenses and accommodations identical to those he was presenting concurrently to Nassau County and which were, in fact, paid by the County.

SUPERSEDING INDICTMENT

4. For the purpose of executing the said scheme, on or about the following dates, within the Eastern District of New York, WILLIAM CAHN, the defendant, knowingly caused the claims for reimbursement of travel expenses to be delivered by mail to the organizations and associations set forth below.

5. For the further purpose of executing the said scheme, within the Eastern District of New York, and elsewhere, WILLIAM CAHN, the defendant, knowingly caused the organizations and associations set forth below to deliver by mail to him as addressee, on or about the following dates, a check in payment, among other things, of the purported claim for reimbursement of travel expenses.

(Title 18, United States Code, Section 1341)

COUNT	ITINERARY	DATE OF MAILING TO ORGANIZATION	DATE OF MAILING OF CHECK BY ORGANIZATION	DUPLICATIVE ITEMS AND AMOUNTS	
11	San Francisco;	6/17/71 (NDAA)	6/28/71	Airfare Meals Car Rental Gratuities	$410.00 50.00 36.46 15.00
12	San Francisco;	7/27/71 (NDAA)	8/6/71	Airfare Hotel Meals Taxi Gratuities	$202.00 135.68 15.00 10.00 6.00

SUPERSEDING INDICTMENT

COUNT	ITINERARY	DATE OF MAILING TO ORGANIZATION	DATE OF MAILING OF CHECK BY ORGANIZATION	DUPLICATIVE ITEMS AND AMOUNTS	
13	Washington, D.C.	9/24/71 (NDAA)	9/30/71	Airfare Hotel Meals	$ 52.00 45.90 30.00
14	Anaheim	9/30/71 (NDAA)	10/19/71	Airfare Hotel Meals Car Rental	$410.00 43.58 35.00 50.32
15	San Francisco; Reno; Las Vegas	11/22/71 (NDAA)	12/17/71	Airfare Hotel Meals Gratuities	$442.00 260.00 125.00 20.00
16	Houston, San Francisco; Reno; Chicago; Indianapolis, St. Louis	2/24/72 (NDAA)	2/28/72	Airfare Hotel Meals Car Rental	$1154.00 125.00 420.00 84.76
17	San Juan; Houston; Phoenix	5/15/72 (NDAA)	5/17/72	Airfare Hotel Meals	$132.00 200.00 100.00
18	Washington, D.C.	6/7/72 (NDAA)	6/9/72	Airfare Hotel Meals Taxi & Incidentals	$ 68.00 35.00 25.00 25.00
19	Boston (B), Houston (H)	6/15/72 (NDAA)	6/23/72	Airfare " Hotel " Meals " Gratuities "	$ 62.00 B 264.00 H 65.00 B 210.00 H 50.00 B 75.00 H 25.00 B 20.00 H
20	San Francisco; Reno	2/20/73 (NDAA)	2/23/73	Airfare Meals Gratuities Car Rental	$872.00 167.00 15.00 100.00

21	Washington, D.C.	2/27/73 (NDAA)	3/1/73	Airfare Meals Taxi Gratuities	$ 68.00 35.00 15.00 6.00
22	Washington, D.C.	3/21/73 (NDAA)	3/28/73	Airfare Hotel Taxi Gratuities Meals	$ 68.00 40.00 12.00 6.00 30.00
23	Chicago	4/9/73 (NDAA)	4/13/73	Airfare Meals Gratuities	$153.83 30.00 10.00
24	Chicago	4/26/73 (NDAA)	5/2/73	Airfare Gratuities	$317.46 10.00

COUNT	ITINERARY	DATE OF MAILING TO ORGANIZATION	DATE OF MAILING OF CHECK BY ORGANIZATION	DUPLICATIVE ITEMS AND AMOUNTS	
25	San Francisco; Reno	10/15/73 (NDAA)	10/23/73	Airfare Hotel Meals	$436.00 120.00 130.00
26	Washington, D.C.	11/30/73 (NDAA)	12/14/73	Airfare Hotel Meals Gratuities	$ 69.27 27.56 20.00 6.00
27	San Francisco; Las Vegas Houston; New Orleans; Reno	7/30/73 (NDAA)	8/21/73	Airfare Meals Car Rental Gratuities and Incidentals	$437.27 100.00 163.62 10.00
28	San Francisco; Las Vegas; Houston New Orleans; Reno	7/30/73 (College)	8/14/73	Airfare Hotel Meals Gratuities	$213.27 63.90 50.00 5.00

SUPERSEDING INDICTMENT

29	Houston	6/10/71 (College)	8/24/71	Airfare Hotel Meals	$235.00 75.00 40.00
30	Houston	8/10/71 (College)		Airfare Hotel Meals	$206.00 50.00 33.00
31	Houston; New Orleans	2/17/72 (College)	2/25/72	Airfare Hotel Meals	$206.00 30.00 15.00
32	Houston	7/19/72 (College)	7/24/72	Airfare Hotel Meals	$206.00 50.00 40.00
33	Houston	10/10/72 (College)	10/24/72	Airfare Hotel Meals	$212.00 42.00 25.00
34	New Orleans	1/15/73 (College)	1/23/73	Airfare Hotel Meals Gratuities	$180.00 60.00 50.00 5.00
35	Houston	7/13/73 (College)	7/25/73	Airfare Hotel Meals	$213.27 95.40 53.00
36	Houston	10/29/73 (College)	11/7/73	Airfare Hotel Meals	$213.27 24.00 25.00
37	Houston; San Antonio	10/27/73 (College)	12/3/73	Airfare Hotel	$458.54 50.00
38	Atlanta	12/11/73 (College)	12/18/73	Airfare Hotel Meals Taxi	$266.54 52.00 20.00 34.60

SUPERSEDING INDICTMENT

COUNT	ITINERARY	DATE OF MAILING TO ORGANIZATION	DATE OF MAILING OF CHECK BY ORGANIZATION	DUPLICATIVE ITEMS AND AMOUNTS	
39	San Francisco; Reno	5/13/74 (College)	6/4/74	Airfare Taxi	$750.54 20.00
40	Chicago; San Francisco	11/16/74 (College)	11/27/74	Airfare	$285.46
41	Chicago; Houston	6/4/73 (College)	6/14/73	Airfare	$213.27
42	Los Angeles	10/2/73 (Center)	10/29/73	Airfare	$337.27
43	Mexico City	3/25/74 (Center)	5/16/74	Airfare	$246.80
44	Acapulco; Los Angeles	6/29/72 (Task Force)	7/5/72	Airfare	$284.50
45	New Orleans; Houston	9/13/73 (Society)	9/25/73	Airfare Hotel Meals Taxi	$235.27 30.00 21.00 15.00

COUNT FORTY SIX

1. From on or about the 29th day of April 1974 to the 30th day of May 1974, both dates being approximate and inclusive, within the Eastern District of New York, WILLIAM CAHN, the defendant, did devise and intend to devise a scheme to obtain money from the National District Attorneys Association by false and fraudulent pretenses.

2. It was a part of the scheme to obtain money by false pretenses that the defendant did send a claim to the National District Attorneys Association for reimbursement for $604.91 in

travel expenses which WILLIAM CAHN, the defendant, was concurrently causing Nassau County to pay upon separate claims submitted by the defendant.

3. It was a further part of the scheme to obtain money by false pretenses that the claim to the National District Attorneys Association was not a true claim for reimbursement for travel expenses, all of which were paid for by Nassau County. Instead, it was a device for obtaining money from the National District Attorneys Association, which monies WILLIAM CAHN, the defendant, would be able to and did dispose of for purposes unrelated to the affairs and activities of the National District Attorneys Association.

4. It was a further part of the scheme to obtain money by false pretenses that WILLIAM CAHN, the defendant, did not disclose to the National District Attorneys Association the fact that the aforesaid claim included requests for reimbursement for expenses identical to those he was presenting concurrently to Nassau County and which were, in fact, paid by the County.

5. It was a further part of the scheme to obtain money by false pretenses that in the aforesaid claim to the National District Attorneys Association, WILLIAM CAHN, the defendant, sought reimbursement for $100.00 in hotel expenses allegedly incurred in Las Vegas, Nevada, whereas, in fact, the said hotel accommodations had been provided to him free of charge.

SUPERSEDING INDICTMENT

6. For the purpose of executing the said scheme, on or about April 29, 1974, within the Eastern District of New York, the defendant, WILLIAM CAHN, knowingly caused the aforesaid claim for reimbursement for $604.91 in travel expenses and $100.00 in hotel expenses,to be delivered to the National District Attorneys Association by mail.

7. For the further purpose of executing the said scheme, within the Eastern District of New York, and elsewhere, the defendant, WILLIAM CAHN, knowingly caused the National District Attorneys Association to deliver by mail to him as addressee, on or about May 16th, 1974, a check in payment, among other things of the aforesaid claims for reimbursement.

(Title 18, United States Code, Section 1341)

Foreman

DAVID G. TRAGER
UNITED STATES ATTORNEY

SUPERSEDING INDICTMENT

Form DJ-195
(Ed. 2-7-66)

No. _____

UNITED STATES DISTRICT **COURT**

Eastern *District of* New York

Criminal *Division*

THE UNITED STATES OF AMERICA

vs.

WILLIAM CAHN,

Defendant

SUPERSEDING
INDICTMENT

(T. 18, U.S.C. §§ 2, 1001, 1341)

A true bill,

_____
Foreman.

Filed in open court this _____ *day*

of _____, *A. D. 19*__

_____
Clerk.

*Bail, $*_____

_____

GPO 902-482

SUPERSEDING INDICTMENT

INFORMATION SHEET

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Title of case (name of first party on each side only)

U.S.A. v. WILLIAM CAHN

Category in which case belongs (see Rule 1(a)).

1. Bankruptcy

   A. _____ Chapters X and XII

   B. _____ All others

2. _____ Civil

3. X Criminal

Title and number, if any, of related cases (see Rule 3).

U.S.A. v. WILLIAM CAHN - 75 CR 645

If this case is entitled to a preference, indicate reason _____

SUPERSEDING INDICTMENT

Has a prior action between the same parties and based on the same claim ever been filed in this or another court? yes

What is its name and number? U.S.A. v. William Cahn - 75 CR 645

Does the complaint in this case question the constitutionality of an Act of Congress? no If so, is the United States or an officer, agent or employee of the United States a Party? _____

Is this a case which should be tried in Westbury? no

State the reasons: _____

Attorney JAMES O. DRUKER

Address Assistant U. S. Attorney

Telephone Number 596-5741

GRAND JURYS PROPOSED AMENDMENT TO SUPERSEDING INDICTMENT.

ERK:rb
F.#761282

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

-against- 75 CR 645(S)

FILED
IN CLERK'S OFFICE
U.S DISTRICT COURT E.D. N.Y.
MAY 11 1976
TIME A.M.
P.M.

WILLIAM CAHN,

Defendant.

- - - - - - - - - - - - - - - - - - - -x

THE GRAND JURY DECLARES:

On March 19, 1976, the January, 1975 Special Grand Jury returned Indictment 75 CR 645(S). Counts One and Two of the aforesaid indictment read as follows:

COUNT ONE

On or about the 16th day of November 1974, within the Eastern District of New York, WILLIAM CAHN, the defendant, did wilfully and knowingly make and cause to be made a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, by stating falsely, in an application for reimbursement for $142.73 in airfare expenses filed with the National College of District Attorneys, that he was not receiving any reimbursement from any other source for the aforesaid expenses and that no other funds were available to reimburse him for that expense. The National District Attorneys Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA. (Title 18, United States Code, Section 1001).

GRAND JURYS PROPOSED AMENDMENT TO SUPERSEDING INDICTMENT

COUNT TWO

On or about the 16th day of November 1974, within the Eastern District of New York, WILLIAM CAHN, the defendant, did wilfully and knowingly cause, counsel and induce Joseph E. Spinnato, an Assistant District Attorney on his staff, to make a false statement in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, by causing, counseling and inducing Joseph E. Spinnato to state falsely, in an application for reimbursement for $142.73 in airfare expenses filed with the National College of Attorneys, that Joseph E. Spinnato was not receiving any reimbursement from any other source for the aforesaid expense and that no other funds were available to reimburse Joseph Spinnato for that expense. The National District Attorneys Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA.

The January, 1975, Special Grand Jury, which returned the aforesaid indictment, hereby amends, and authorizes the United States District Court to amend, the last sentence in Counts One and Two of the aforesaid indictment to read as follows:

"The National College of District Attorneys was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA."

GRAND JURYS PROPOSED AMENDMENT TO SUPERSEDING INDICTMENT

The January, 1975, Special Grand Jury, which returned the aforesaid indictment, further amends, and authorizes the United States District Court to amend, the reference to the "National College of Attorneys" in the first sentence of Count Two of the aforesaid indictment to read "National College of Dis ict Attorneys."

Joseph Hendrie
FOREMAN

David G. Trager
DAVID G. TRAGER
UNITED STATES ATTORNEY

DEFENDANT'S NOTICE OF MOTION TO DISMISS INDICTMENT AND QTHER RELIEF REQUESTED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA,

-against-

WILLIAM CAHN,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 8 1976
TIME A.M.
P.M.

75-CR-645 (S)

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SIRS:

PLEASE TAKE NOTICE that WILLIAM CAHN, the undersigned, shall move this court at a date and time designated by the court for the following relief:

1. For the dismissal of Indictment 75-CR-645 (S), pursuant to Rule 12 of the Federal Rules of the Criminal Procedure (18 U.S.C.) on the grounds that

   a. The indictment fails to charge an offense against the United States; and

   b. That prosecution thereon would violate the defendant's 5th Amendment rights.

2. The dismissal of Indictment 75-CR-645 in order to insure the defendant's protection against double jeopardy.

3. The striking from Indictment 75-CR-645 (S), of certain prejudicial surplusage.

4. For discovery and inspection of the Grand Jury minutes

5. For the recognition of the defendant's right to a speedy retrial of Indictment 75-CR-645.

6. That the Court designate this case as a "Westbury" case.

WILLIAM CAHN
ATTORNEY AT LAW
78 OLD COUNTRY ROAD
MINEOLA, NEW YORK 11501

R.J.

DEFENDANT'S NOTICE OF MOTION TO DISMISS INDICTMENT
AND OTHER RELIEF REQUESTED

7. And such other and further relief as to this Court may seem just and proper.

The defendant specifically reserves his right to make such other and further motions as may be required or advisable depending upon the Court's decision with respect to this motion or otherwise, including but not limited to discovery.

Dated: April 8th, 1976

Yours, etc.

WILLIAM CAHN
Attorney for Defendant
278 Old Country Road
Mineola, N.Y., 11501
(516-747-7616)

TO: JAMES O. DRUKER
Assistant U. S. Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, N.Y., 11201

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

-against-

75-CR-645 (S)

WILLIAM CAHN,

Defendant.

- -x

DEFENDANT'S MEMORANDUM
IN SUPPORT OF MOTION
TO DISMISS THE INDICTMENT
AND OTHER REQUESTED RELIEF

Respectfully submitted

WILLIAM CAHN
Attorney for Defendant

NEIL R. CAHN
(of counsel)

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT

PRELIMINARY STATEMENT

The Defendant, former District Attorney of Nassau County, has been charged under this superseding indictment with 36 counts of mail fraud (18 U.S.C. 1341) and 10 counts of making a false statement (18 U.S.C. 1001). The violations charged arise out of certain actions taken by the defendant in the performance of his duties as the Nassau County District Attorney.

This superseding indictment was returned by the Grand Jury on or about March 19th, 1976, some 3 weeks after Judge Dooling declared a mistrial after the Jurors failed to agree upon a verdict on Indictment 75-CR-645. That indictment charged the defendant with 8 counts of mail fraud, one of which was dismissed during the trial, one count of making a false statement which was dismissed prior to trial, and 2 counts of perjury (18 U.S.C. 1623), which were severed from the mail fraud counts.

By this motion the defendant asks this court to dismiss the superseding indictment or in the alternative, to dismiss the superseded indictment. Alternatively, the defendant asks this court to strike from the superseding indictment certain prejudicial surplusage, allow him to discover and inspect the Grand Jury Minutes which lead to the return of the superseding indictment, and recognize the defendant's rights to a speedy retrial of the superseded indictment. Lastly, the defendant requests that this Court declare this case to be a "Westbury" case.

It is defendant's contention that the superseding indictment should be dismissed on the grounds that not one of the 46 counts contained therein charges factual allegations which

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constitute a crime cognizable by this Court. (Point I, infra) Further, it is submitted that in view of jeopardy having attached upon Indictment 75-CR-645, to prosecute the defendant upon the superseding indictment would violate the defendant's 5th Amendment guaranty against being twice placed in jeopardy. Additionally, it is submitted that the actions of the government in obtaining this superseding indictment and in recasting the charge against the defendant in light of the events and rulings of law of the trial upon the old indictment constitute such harrassment and judicial unfairness as to be violative of the due process provisions of the 5th Amendment. (Point II, infra)

It is contended that should this court not dismiss the superseding indictment, then, in order to insure the defendant's protection against being twice placed in jeopardy and to remove unnecessary anxieties and burdens from the defendant, this court should dismiss indictment 75CR 645. (Point III, infra)

Next, the defendant asks this court to strike from Paragraph 1 of the preliminary paragraphs to the 36 mail fraud counts, the date, September 14, 1969, as prejudicial surplusage. (Point IV, infra)

The defendant also requests that this court grant the defendant the right to discover and inspect the transcript of testimony before the Grand Jury which resulted in this indictment. In the alternative, the defendant asks this court to make an in camera inspection of those minutes. Such review is necessary in order to determine if this Grand Jury heard any live witnesses at all, whether in submitting or reading prior statements of the

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witnesses, the Government read the complete statements of those witnesses, and whether the Grand Jury was fully and properly advised of its right to have appear before it such witnesses as it desired. (Point V, infra)

In view of certain events which transpired at a conference before Judge Platt on March 26th, 1976, the defendant asks this court to review those events with reference to the defendant's right to a speedy retrial of Indictment 75 CR 645. (Point VI, infra)

Lastly, the defendant asks that this court declare this case to be a"Westbury" case. (Point 7, infra)

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that by trying this case in Westbury, the Court and the judicial processes would not be overly burdened or inconvenienced, the Court would accommodate the defendant and the witnesses.

CONCLUSION

For the reasons herein above stated, the relief requested by the defendant should be granted.

Respectfully submitted,

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Attorney for Defendant
Office & P. O. Address
278 Old Country Road
Mineola, New York, 11501
(Phone 518-747-7616)

NEIL R. CAHN
(of counsel)

DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT

POINT I

NOT ONE OF THE FORTY-SIX (46) COUNTS OF THE SUPERSEDING INDICTMENT CHARGES A CRIME.

The superseding indictment, 75CR645(S), charges the defendant with ten (10) counts of filing a false statement (18 U.S.C. 1001), and thirty-six (36) counts of mail fraud (18 U.S.C. 1341). It is submitted that not one of the forty-six (46) counts contained in the superseding indictment alleges facts which constitute a crime. It is submitted that the indictment is legally insufficient and that any verdict thereon would be null and void.

An indictment must contain all the essential elements of the offense. United States v. Zeehandelaar, 498 F.2d 352 (2d Cir. 1974). Alternatively phrased, the facts alleged in the indictment, and only those facts, must constitute the violation charged.

As was noted by the Supreme Court in Russell v. United States, 369 U.S. 749, 768-9, 82 S.Ct. 1038, 1049-50, 8 L.Ed.2d 240 (1962):

> "It has long been recognized that there is an important corollary purpose to be served by the requirement that an indictment set out 'the specific offence, coming under the general description,' with which the defendant is charged. This purpose, as defined in United States v. Cruikshank, 92 U.S. 542, 558, 23 L.Ed. 588, is 'to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had.' This criterion is of the greatest relevance here, in the light of the difficulties and uncertainties with which the federal trial and

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> reviewing courts have had to deal in cases arising under 2 U.S.C. Section 192, 2 U.S.C.A. Section 192, to which reference has already been made. [citations omitted] Viewed in this context, the rule is designed not alone for the protection of the defendant, but for the benefit of the prosecution as well, by making it possible for courts called upon to pass on the validity of convictions under the statute to bring an enlightened judgment to that task. [citation omitted]"

The mandatory nature of this corollary was noted by the Second Circuit in United States v. Seegar, 303 F.2d 478 (1962). As was stated in United States v. Rizzo, 373 F.Supp. 204 (S.D.N.Y. 1973), aff'd sub nom. United States v. Marion, 493 F.2d 1399 (2d Cir. 1974), cert. denied 419 U.S. 872:

> "Moreover, the defendant must be assured that he is defending against charges, the essential elements of which were determined by the grand jury itself and such elements must therefore be alleged in the indictment. Otherwise, there is danger that the prosecution could fill in essential elements of the alleged unlawful conduct as the proceedings went along which were not before the grand jury and were not passed upon by it. [citation omitted]"

It is submitted that if only the facts alleged in each of the forty-six (46) counts are proven, not a single instance of criminal conduct would be shown.

(a) The Mail Fraud Counts (18 U.S.C. 1341)

Each of the thirty-six (36) mail fraud counts has as its sole factual basis the two (2) following allegations:

(1) That the defendant submitted to one of six (6) private entities a claim for reimbursement for expenses; and

(2) That he concurrently submitted a claim to the County of Nassau for those same expenses.

These two (2) allegations, standing alone, charge no crime.

The defendant denies that he, in his individual capacity, ever received or intended to receive payments for the same expense from Nassau County and the private entity named in each count, despite the fact that that expense, in each case, was incurred for distinct purposes of the County and the other entity. However, the defendant recognizes that such denials are not properly within the scope of this motion to dismiss.

That is not to say that under the sole facts alleged in the indictment, the defendant had no right to claim expenses from the private entity while concurrently claiming reimbursement from the County. Further, that is not to say that the defendant could not have retained two (2) payments.

There is no crime in receiving two (2) payments for the same expense from two (2) sources. The government does not dispute that in each of the thirty-six (36) counts the named private entity engaged the defendant's services, and in consideration therefor agreed to pay the expenses of his trip and in certain circumstances an additional honorarium. Further, the government does not dispute the fact that the defendant performed each of the conditions required in his agreement with each private entity.

The government apparently contends that it was criminal to claim expenses from the private entities while concurrently asking the County to pay those same expenses, incurred on trips during which the defendant performed distinct services for the County and those other entities.

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No criminal statute condemns this practice, and, as has often been stated, there are no federal common law crimes. See e.g., Jerome v. United States, 318 U.S. 101, 63 S.Ct. 483, 87 L.Ed. 640 (1943). In order for conduct to be considered a crime, there must be a federal statute defining that conduct to be criminal and imposing a punishment. Vierick v. United States, 318 U.S. 236, 63 S.Ct. 561, 87 L.Ed. 734 (1943). With all due respect, it is not within the province of the courts to make an act a crime "which is not within both the letter and spirit of a penal statute." United States v. Fisher, 456 F.2d 1143, 1145 (10th Cir. 1972).

Not only is receiving two (2) payments for a single expense not a crime, but an individual may petition the courts to recover double payments. For example, where an individual has coverage under two (2) insurance policies, he may recover his expenses from both companies, unless it is expressly and unambiguously stated that expenses will not be reimbursed under such circumstances. See e.g., Rubin v. Empire Mutual Insurance Company, 25 N.Y.2d 426, 306 N.Y.S.2d 914 (1969); Thomas v. Universal Life Insurance Co., 201 So.2d 529 (3rd Cir.Ct. App.La. 1967); Sykes v. Nationwide Mutual Insurance Company, 413 Pa. 640, 198 A.2d 844 (1964). As was noted in Nationwide Mutual Insurance Co. v. Schiansky, 176 A.2d 786 (Mun.Ct.App.D.C. 1961), the law does not prevent the double reimbursement of expenses.

If the allegations of the indictment are held to constitute a crime herein, Mr. Rubin (in Rubin, supra) after claiming or receiving payment from his insurance company upon the decision

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of the Court of Appeals of the State of New York, could be convicted of mail fraud. The same is true with Mr. Thomas, Ms. Sykes and Mr. Schilansky. Such a result cannot be the law.

Even where the expenses were not actually paid by the civil claimant, the courts have enforced obligations to pay. See Crosson v. N.V. Stoonvart Mij "Nederland", 409 F.2d 865 (2d Cir. 1969), in which a stevedore was held liable for counsel fees to a shipowner, despite the fact that the shipowner's insurance company defended the action at no cost to the shipowner. See also Spurr v. La Salle Construction Co., 385 F.2d 322 (7th Cir. 1967). In North Central Airlines, Inc. v. City of Aberdeen, S.D., 370 F.2d 129, 134 (8th Cir. 1975), the court held that a tenant which agreed to pay the landlord's expenses, was not affected by the fact that the landlord had insurance to cover its expenses.

This is not a civil case in which the defendant herein is seeking to declare his rights to payment from the private entities involved. Nor is this case a civil case in which those private entities are seeking refund of payments made. It is submitted that the resolution of such cases would involve extremely complex issues of law. Moreover, it is submitted that proof of the allegations of the indictment would not be determinative of either the defendant's right to payment or the private entities' right to refund.

Where from the allegations of an indictment alone it can be established that it would have been wrong for the alleged victim not to have paid the defendant, the indictment is legally insufficient. It is submitted that if in order to charge a

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crime, additional allegations are required, such "necessary allegations cannot be left to inference." Williams v. United States, 265 F.2d 214, 218 (9th Cir. 1959).

The thirty-six (36) mail fraud counts should be dismissed.

(b) The False Statement Counts (18 U.S.C. 1001)

The defendant is herein charged with ten (10) counts of filing false statements or concealing material facts in matters within the jurisdiction of the Law Enforcement Assistant Administration (hereinafter "LEAA").

It is alleged that in making his claim for some of the trips mentioned in the thirty-six (36) mail fraud counts, and for certain trips not included therein (see Point II, infra), false statements were made to or material facts concealed from the private entities with whom the defendant agreed to perform services. It is further alleged that these private entities used LEAA funds to pay the defendant's claims.

First, it must be noted that count three (3) of the superseding indictment (as count seven (7) of Indictment #75CR645) was dismissed before trial by Judge Dooling. The government sought to appeal Judge Dooling's decision and subsequently withdrew its appeal. The court concluded that any charge under Section 1001 involving the LEAA must be predicated upon the language contained in 42 U.S.C. 3792. At pages 11 through 13 of the Order dated January 9, 1976, Judge Dooling stated:

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DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT

"The more serious question is whether Count 7 is sufficient in alleging an offense under Section 1001. Reference is made to 42 U.S.C. 3701-3795, which codifies the part of the Omnibus Crime Control and Safe Streets Act of 1968 which dealt with the Law Enforcement Assistance and Criminal Justice parts of the Act. Sections 3791 and 3792 deal with embezzlement and related wrongs affecting LEAA funds (3791) and the knowing and willful falsification, concealment or covering up by trick, scheme or device of any material fact in 'any application for assistance submitted pursuant to' the chapter (3792). It will be seen that the language of Section 3792 just paraphrased is identical with the first part of the language of Section 1001 which reads

> 'Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, ... shall be fined ... or imprisoned ... or both.'

Nothing, however, in Section 3792 goes on to pick up the remaining language of Section 1001 which is the following:

> '... or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined ... or imprisoned ... or both.'

However, the Count as drafted is drafted under this latter quoted language of Section 1001 and not under that language of Section 3792 which is present also in Section 1001. It must be concluded from this that the Count is bad if it requires underpinning from Section 3792, for if that section is relied upon at all, it would appear that the charging language of the Count must express an offense within the language of Section 3792 rather than simply within the language of Section 1001. Whatever the reason for the particular language chosen and the particular approach taken in Sections 3792 and 3792, it seems clear that the LEAA offense, if intended to be singled out, must be charged in the language of Section 3792.

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DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT

> Whether Count 7 can be saved as a Count directly under Section 1001 was not really argued. The Government's brief simply assumed that it was enough that the National Center for Prosecution Management was an LEAA funded organization. But an entity hardly becomes an agency or department of the United States because it is funded under such an LEAA program, and, in the light of only authority so far seen, it must be concluded that the Count is not sufficient under Section 1001 standing alone.
>
> Nor does it appear that the facts alleged could support a Section 3792 case. That section is limited to false material used in connection with an 'application for assistance submitted pursuant to' the Law Enforcement Assistance Chapter of Title 42. A claim for reimbursement of travel expenses made to an LEAA assisted entity, or in connection with an assisted program, would not be within the statute."

Not only has the government charged in count three (3) the identical allegations contained in count seven (7) of the old indictment, without any attempt to correct the deficiencies noted by the court, but the government also seeks to charge nine (9) additional violations. Upon the rationale of Judge Dooling, that a false statement charge involving the LEAA requires its basis in 42 U.S.C. 3792, the defendant asks this court to dismiss counts one (1) through ten (10).

Additionally, the defendant seeks dismissal of the false statement counts on the grounds that it is not sufficiently alleged in the indictment that the false statements or concealments were within the jurisdiction of the LEAA. As was noted by Judge Dooling, a claim to a private entity hardly becomes a matter within the jurisdiction of a United States agency simply because the entity receives funds from that agency. The defendant herein recognizes that a false statement need not be directly

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presented to a government agency in order for a defendant to be convicted under Section 1001. However, for a conviction to be sustained, the nexus between the private entity and the government agency necessary to establish jurisdiction must be proven, as must the facts that the defendant knew of such a relationship and sought to make use of that relationship.

The essence of Section 1001 is the making of a false statement calculated to provoke some governmental action. United States v. Adler, 380 F.2d 917, 922 (2d Cir. 1967). The leading case in this Circuit on this issue is United States v. Candella, 487 F.2d 1223 (2d Cir. 1973). That case makes clear that the government must prove that the private entity to which the statement is made or from which the material fact is concealed, must be controlled or supervised by a federal agency. The private entity must serve as a ministerial agent of the government.

Further, Candella requires that the defendant knew of this relationship and "contemplated that the statement was to be utilized in a manner which was within the jurisdiction of such department or agency." 487 F.2d at 1227.

As was noted in the cases cited in the preliminary portion of this point, if these facts are essential to conviction, such facts, for the reasons stated therein, must be alleged in the indictment.

In counts one (1) and two (2), all that is alleged was that the defendant made or caused to be made a false statement to a private entity in seeking reimbursement for expenses

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and that a second private entity paid the claim with LEAA funds. The facts supporting the jurisdictional nexus between the first private entity, the second private entity and the LEAA are not alleged. Nor is it alleged that the defendant knew of this relationship, or that he made or caused to be made such statements in order to provoke LEAA action. Nor, for that matter, is it alleged that he knew the LEAA was at all involved.

Count three (3) charges the defendant with having made a false statement to a private entity in his claim for expenses and that that private entity paid the claim with LEAA funds. Here, too, the relationship between the private entity and the LEAA is not alleged; neither is it alleged that the defendant knew of such a relationship, nor made such a false statement in order to secure LEAA action on his claim.

In counts four (4) through ten (10), the defendant is charged not with having made false statements, but with concealing material facts in his claims for expenses. The nexus is not alleged. Knowledge is not alleged. The defendant's intent to effect LEAA action is not alleged.

Without these three (3) essential elements, it is submitted that every private transaction would, if the chain of events is extended far enough, be cognizable under Section 1001. Such is clearly not the intended scope of this section. These are the lines recognized by the Second Circuit to restrict the application of this statute.

For these reasons, counts one (1) trhough ten (10) should be dismissed.

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DEFENDANT'S MEMORANDUM I[illegible]PORT OF MOTION TO DISMISS IND[illegible]TMENT

POINT II

THE SUPERSEDING INDICTMENT IS BARRED BY THE DOUBLE JEOPARDY AND DUE PROCESS PROVISIONS OF THE FIFTH AMENDMENT.

On February 27, 1976, a mistrial was declared by Judge Dooling after the jurors failed to agree on a verdict as to any of the seven (7) mail fraud counts submitted to them after the trial of indictment #75CR645. Retrial upon that indictment was scheduled for May 3, 1976.

Some three (3) weeks later, the defendant was informed that a "superseding indictment" had been handed up by a grand jury and the defendant was arraigned thereon. Judge Dooling directed that a plea of not guilty be entered to the new indictment over the defendant's standing mute.

The new indictment, 75CR645(S), charges the defendant with ten (10) violations of 18 U.S.C. 1001 and thirty-six (36) violations of 18 U.S.C. 1341. It is submitted that a trial on this superseding indictment would be violative of the constitutional guarantees against double jeopardy afforded the defendant by the Fifth Amendment, and would constitute such harrassment and fundamental unfairness as to be violative of the due process clause of the Fifth Amendment.

First, it should be noted that defendant does not herein dispute the ability of the government to retry the defendant upon the first indictment. Indeed, the defendant concedes that the declaration of a mistrial by Judge Dooling was a manifest necessity.

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What is vehemently objected to herein is the ability of the government to unfairly take advantage of that mistrial, to reshape and reframe the charges against the defendant based upon the rulings of evidence and substantive issues of law made in that first trial.

It has been held that a defendant may be charged under multiple indictments. Further, the government ordinarily has the right to elect that indictment upon which it desires to proceed to trial. However, the government will not be allowed to proceed to trial with multiple indictments pending. United States v. Bowles, 183 F.Supp. 237, 243 (D.Me. 1958

As was noted by the Eighth Circuit Court of Appeals in De Marrias v. United States, 487 F.2d 19, 21 (1973), cert. denied 415 U.S. 856,

> "[Nothing] would prevent the government from bringing more than one indictment for the same criminal acts against a single defendant so long as jeopardy had not attached to any one of those indictments. This appears to be the prevailing view. [citation omitted]."

What is contended herein is that by proceeding to trial upon the first indictment, it is the right of the defendant to insist upon a final disposition of that indictment. It is submitted that once jeopardy has attached, the government cannot abandon its indictment in an effort to reframe the charges against the defendant to the prejudice of the defendant.

It is accepted that jeopardy attached when the jury was impaneled and sworn. United States ex rel. Rogers v. La Vallee, 517 F.2d 1330, 1333 (2d Cir. 1975). Central to defendant's

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contentions herein is the premise that that jeopardy still continues and that the declaration of a mistrial did not eliminate the fact that jeopardy had attached. It is submitted that the allowance of a retrial upon the first indictment is predicated upon the theory that jeopardy has not come to an end so as to bar that retrial. The first trial, however, is not a nullity.

Not every aspect of the "continuing jeopardy" theory has been accepted by the courts, (United States v. Jenkins, 420 U.S. 358, 369, 95 S.Ct. 1006, 1013, 43 L.Ed.2d 250 (1975); not extending the continuing jeopardy theory to allow a government appeal where reversal would require a new trial). However, the courts have recognized the core of the theory to be valid. Thus, in Green v. United States, 355 U.S. 184, 188, 78 S.Ct. 221, 224, 2 L.Ed.2d 199(1957), the Supreme Court stated that

> "Jeopardy is not regarded as having come to an end so as to bar a second trial in those cases where 'unforseeable circumstances . . . arise during (the first) trial making its completion impossible, such as the failure of a jury to agree on a verdict.' [citation omitted]."

The current issue being debated by the courts is not that jeopardy continues but when jeopardy is concluded. See e.g. Price v. Georgia, 398 U.S. 323, 326-7, 90 S.Ct. 1757, 1759-60, 26 L.Ed.2d 300 (1970). See also Mayers and Yarbrough, "Bis Vexari: New Trials and Successive Prosecutions", 74 Harv.L.Rev. 1, 7-8 (1960).

In an in banc opinion, the Second Circuit noted its approval of the continuing jeopardy rationale. United States v. Coke, 404 F.2d 836, 839 (1968) (recognizing this as the "more

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nearly satisfactory basis" for allowing a retrial after the reversal of a conviction, traditionally justified on the basis that by appeal, a criminal defendant "waived" his right against double jeopardy).

If it is accepted that jeopardy under 75CR645 continues, then it is submitted that the acts of the government in bringing the defendant to trial upon a new indictment would violate the constitutional guarantee against being placed twice in jeopardy. This conclusion is based upon the concept that arraignment itself upon the superseding indictment, and certainly a verdict thereon, requires the dismissal of the old indictment.

Upon arraignment of a second indictment, a court will orginarily quash the first indictment to insure the defendant's protection from double jeopardy. United States v. Strewl, 99 F.2d 474 (2d Cir. 1938). Seven (7) counts of the superseding indictment are present in the old indictment. It is submitted that the defendant, having been arraigned on the superseding indictment, is entitled to have that first indictment dismissed. Certainly, a verdict upon the second indictment will require the dismissal of the first indictment. However, it cannot be forgotten that jeopardy attached and continues on that first indictment. It is contended that any dismissal of an indictment, without the consent of the defendant, once jeopardy has attached must be with prejudice to the government against recharging or retrying the defendant upon charges in the first indictment or with respect to those crimes to which the double jeopardy or collateral estoppel protections of the Constitution would extend.

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The government has by its actions, attempted to bypass and eliminate the requirements and protections of both the Constitution and Rule 48(a) of the Federal Rules of Criminal Procedure (18 U.S.C.). Defendant urges this court not to tolerate such abuses of defendant's rights.

Rule 48(a) provides that the United States Attorney may not obtain a dismissal of an indictment during the trial of the defendant without the consent of the defendant, or such dismissal will be with prejudice. It is submitted that the word "trial" for these purposes must be construed to mean "once jeopardy has attached".

Such was recognized by the Fourth Circuit Court of Appeals in United States v. Chase, 372 F.2d 453, 464 (1967), cert. denied 387 U.S. 907, when it stated that "when a trial has begun and jeopardy has attached. . . a dismissal may not be filed without defendant's consent."

> "If a trial has been commenced, a defendant has a right to insist upon a disposition on the merits and may properly object to a dismissal without prejudice." Woodring v. United States, 311 F.2d 417, 424 (8th Cir. 1963).

The court is advised that certain other courts have dismissed similar contentions of the defendants therein without analysis. In Lynch v. United States, 189 F.2d 476 (5th Cir. 1951), cert. denied 348 U.S. 831, the court held that a mistrial did not bar a subsequent trial of defendants upon a new indictment alleging the identical facts framed under a different statute in view of the fact that the statute on which the original indictment

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was based was held inapplicable to those facts. In Dortch v. United States, 203 F.2d 709 (6th Cir. 1953), cert. denied 346 U.S. 814, it was held that a nolle prosequi, after a mistrial did not bar subsequent reindictment and trial of the defendant. In Burris v. Ryan, 397 F.2d 553, (7th Cir. 1968), it was summarily held that a mistrial would not bar a trial on a subsequent and what appears to be identical indictment.

What, on its face, appears to be the most similar case to that presented herein, and the one in which the most detailed discussion is had is Howard v. United States, 372 F.2d 294 (9th Cir. 1967), cert. denied 388 U.S. 915. In that case, the trial of the defendant upon the first indictment resulted in a mistrial by virtue of the jury's failure to agree. Subsequent to the mistrial, a new indictment was returned which included eight (8) counts identical to those presented by the first indictment and seven (7) new violations of the same statute. The court held that if the defendant could have been retried on the overlapping identical eight (8) counts in any event, a trial on a new indictment charging those eight (8) counts could not constitutionally prejudice the defendant. Further the court noted that the new seven (7) counts alleged seven (7) totally new offenses and even were a verdict to be had on the first eight (8) counts, a subsequent trial on the seven (7) new counts would not be barred.

While there are obvious similarities between the facts presented herein and the Howard decision, it is submitted that the distinguishing facts presented herein call for a contrary conclusion.

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First, while in Howard the eight (8) old counts were carried forward to the new indictment, here, the government has made certain dramatic changes in the overlapping counts. While it was formerly charged that the defendant knew that neither the County Comptroller nor the second organization involved would have permitted him to obtain double reimbursement, no knowledge element is present at all in the superseding indictment.

Also, where formerly the defendant was charged with defrauding either the County of Nassau or the other organizations involved, now the defendant is charged solely with defrauding those other organizations. Finally, while the former indictment charged separate schemes, the superseding indictment recognizes, as the government has stated at numerous oral arguments, that if there is any criminal episode it is a single scheme to obtain monies, and that the various violations arise out of that single scheme.

It is believed that the government is attempting to improperly use the superseding indictment, insofar as the overlapping counts are concerned, to recast the charges in such fashion as to try to exclude evidence offered by defendant at the first trial, and include evidence which was not permitted at that trial. The government should not be allowed to take advantage of its own failure to prove its case by manipulating the judicial machinery which is available only to it in order to refine its own presentation to do better at the 're-trial.' It cannot be the function of a mistrial to be a training ground for Assistant

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United States Attorneys. The government should not be allowed to go to school at the expense of the defendant.

The Supreme Court in Ashe v. Swenson, 397 U.S. 436, 447, 90 S.Ct. 1189, 1196, 25 L.Ed.2d 469 (1970) noted that

> "[r]efinement of presentation in light of the turn of events at the first trial is precisely what the constitutional guarantee [against double jeopardy] forbids."

(The defendant therein was acquitted of robbing one victim and was sought to be tried for robbing another victim at the same time). See also United States v. Wilkins, 348 F.2d 844, 849 (2d Cir. 1965), noting the fundamental unfairness of allowing the government to do better the second time around.

Secondly, it is submitted that a verdict upon the first indictment, or a dismissal thereof with prejudice, would bar the trial upon those non-overlapping counts contained in the superseding indictment. As is expressly stated in the superseding indictment, the thirty-six (36) mail fraud counts arise out of a single scheme.

The issue is not here whether the government in its first indictment could charge the defendant with thirty-six (36) separate offenses arising out of the single criminal episode nor is it whether the defendant, if convicted, could receive a total of thirty-six (36) punishments.

What is at issue is whether the government can charge some of the alleged violations arising out of a criminal episode, make use of all the other known alleged violations arising out of that scheme, as prior similar acts, at the trial thereof, and then proceed to try the defendant for those prior similar acts.

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It is submitted that the government may not here, having tried the defendant upon eight (8) counts of defrauding either the County of Nassau or certain other entities, and having made use at that trial of forty-six (46) other "violations" arising out of that same scheme, as prior similar acts, in order to prove the disputed issues, proceed to try the defendant on some of those forty-six (46) other known "similar acts".

It should be noted that this time around the defendant is not charged with having defrauded Nassau County nor is the defendant charged for every one of the "prior similar acts" used at the last trial. If the government is allowed to proceed to trial on the superseding indictment, what is to prevent the government from charging the defendant later either with defrauding Nassau County or with those prior similar acts not included in this indictment.

It is submitted that this is precisely the evil against which the Supreme Court directed its attention in Ashe v. Swenson, supra. See also United States v. American Honda Motor Company, 273 F.Supp. 810 (N.D.Ill. 1967).

It is further submitted that an analysis of a realistic and rational view of the ten (10) false statement counts would reveal that they too involve the same centrally disputed issues, the defendant's knowledge and intent, and that they were necessary, incidental elements of the alleged mail fraud scheme. It is submitted that the government should also be foreclosed from prosecuting these ten (10) counts.

As the Supreme Court noted in Ashe, supra, this concept

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of collateral estoppel is embodied within the double jeopardy protection of the Fifth Amendment. However, entirely apart from the double jeopardy provisions, it is submitted that the government's attempt to recast the charges against the defendant and to subject him to repeated trials, all designed to prejudice the defendant, preclude his defenses, bring in extrinsic irrelevant evidence and subject him to the physical, psychological and financial burdens and anxieties of untold successive prosecutions is so fundamentally unfair and harrassing as to violate the due process provisions of the Fifth Amendment.

As was noted in United States v. American Honda Motor Company, 273 F.Supp. 810, 819 (N.D.Ill. 1967), successive indictments, for the alleged separate conspiracies therein, arising out of the same transactions may, and in that situation did, constitute harrassment in violation of the due process provisions of the Fifth Amendment. As the court therein noted

> "The government is not a ringmaster for whom individuals and corporations must jump through a hoop at their own expense each time it comments." 273 F.Supp. at 820.

Unless these types of practices are condemned, in effect the defendant will be subjected to trial by attrition. Cf. United States v. Castellanos, 478 F.2d 749, 753 n.4 (2d Cir. 1973).

Thus, by its acts, the government has created a situation where the first indictment will have to be dismissed, whether now or at some future date. Such a dismissal must be with prejudice not only as to the specific alleged violations therein, but as to all other violations so intimately tied to those charged in the first indictment as to be collaterally estopped from further

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prosecution or where to subject the defendant to a trial thereon would be so fundamentally unfair and constitute such harrassment as to violate all accepted notions of fair play and due process.

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POINT III

INDICTMENT #75CR645 SHOULD BE DISMISSED.

For the reasons hereinabove stated in Point II of this memorandum, should this court decline to dismiss the superseding indictment, 75CR645(S), it is submitted that the government should not be allowed to proceed to trial upon the superseding indictment whil the former indictment remains pending. In order to insure the defendant's protection against being twice placed in jeopardy, the defendant asks that the first indictment be dismissed with prejudice. United States v. Strewl, 99 F.2d 474 (2d Cir. 1938); United States v. Bowles, 183 F.Supp. 237 (D.Me. 1958).

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POINT IV

THE DATE, SEPTEMBER 14, 1969, CONTAINED IN PARAGRAPH 1 OF COUNTS 11 THROUGH 46, SHOULD BE STRICKEN.

Paragraph 1 of Counts 11 through 46 [sic] alleges that from on or about the 14th day of September, 1969, to the 30th day of November, 1974, the defendant engaged in a mail fraud scheme. The first date on which it is alleged any action in furtherance of that scheme was taken is June 17, 1971. (see Count 11). Not a single act is alleged to have occurred between September 14, 1969 and June 17, 1971.

In accordance with the provisions of Section 7(d) of the Federal Rules of Criminal Procedure, the defendant herein asks this Court to strike this date from the indictment as surplusage which is prejudical to the defendant. The defendant can speculate as to the reasons this date was chosen. It is again an attempt to foreclose the issue of the admissibility of certain pieces of evidence. (see Point II, supra). However, it is submitted that the defendant need not prove the improper motive behind the inclusion of this date in the indictment. Rather, it is contended that upon a showing that that date is wholly unnecessary to the validity of the indictment and that its presence within the indictment is prejudical, the date should be stricken.

The September 14, 1969 date neither describes nor provides a point of reference for any of the factual allegations of the indictment. Nothing in the indictment indicates anything other than the fact that June 17, 1971, was the date on which the alleged

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scheme was commenced. The prior date is totally irrelevant and adds nothing to the indictment. To the contrary, the presence of that date creates questions, and more importantly for the defendant, creates an inference.

It is submitted that the presence of this date in the indictment reasonably leads to the inference that the defendant has done something more than is charged by the indictment. The jury might very well infer, when and if this indictment is read to them, that for some two years prior to the acts with which he is charged, the defendant engaged in similar conduct. Requiring the jury to speculate as to the "evil deeds" committed by the defendant other than those charged, might unfairly magnify the issues involved. If the jury believes that the defendant has committed certain acts which have not even been discussed,they might tend to convict him despite the evidence on the offenses charged.

There is simply no need for this date to be present in the indictment. If the government desires to offer evidence of certain acts prior to those charged, such should be governed by the Federal Rules of Evidence, and should not be predicated on the fact that it was performed within the period charged in the indictment and, therefore, must be considered part of the single scheme alleged.

"The 14th day of September, 1969" should be stricken from the indictment.

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POINT V

DEFENDANT SHOULD BE PERMITTED TO INSPECT THE GRAND JURY MINUTES.

It is believed that the procedures followed and evidence presented by the government to the grand jury which returned this superseding indictment were so improper as to render the indictment susceptible to dismissal. In order to conclusively determine these issues, an inspection of the minutes of the proceedings of the grand jury is necessary.

While defendant recognizes the sanctity of the grand jury, and, indeed, in his tenure of twenty-five (25) years in the Nassau County District Attorney's Office insisted upon the secrecy of grand jury proceedings, it is believed in this instance the proceedings leading to the return of this indictment were so improper and so grossly violative of the defendant's constitutional rights and the guidelines of this Circuit, as to require a review of those proceedings. While the situations in which a court will allow a review of grand jury proceedings is rare, it is submitted that in this case, the defendant can show a sufficient particularized need for that review so as to come within the requirements of rule 6(e) of the Federal Rules of Criminal Procedure. See United States v. Dornau, 356 F.Supp. 1091 (S.D.N.Y. 1973).

It is the defendant's understanding that the grand jury which returned the superseding indictment was the third grand jury to view all the matters which are covered by the superseding indictment. All these incidents, when presented to the first two (2) grand juries, culminated in the old indictment. Apparently,

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after the mistrial was declared, the government went to a third grand jury, presented the same incidents a third time, resulting in the superseding indictment. While inconsistent action by grand juries will not, of itself, render an indictment insufficient, it is contended that these facts both point to the harrassment of the defendant (see Point II, supra), and set the stage for this motion.

The defendant is unaware of the presence before the third grand jury of any live witnesses. It is believed that the sole evidence which was presented to the grand jury was testimony of witnesses from prior grand jury proceedings or the trial on the old indictment, itself. Such a practice has been condemned by this Circuit. cf. United States v. Estepa, 471 F.2d 1132 (2d Cir. 1972); United States v. Leibowitz, 420 F.2d 39 (2d Cir. 1969); United States v. Arcuri, 405 F.2d 691 (2d Cir. 1968); and United States v. Umans, 368 F.2d 725 (2d Cir. 1966). The defendant desires a review of the grand jury proceedings to determine whether such was the case, and whether the grand jury was fully advised of its right to summon live witnesses.

Particularly in view of the fact that some of the evidence presented to the grand jury may have been perjured testimony, and known to be such by the government, a review of the proceedings is necessary to determine whether when presenting the prior testimony of the witnesses, the entirety of the testimony was given. Editing, summarizing, and the reading of partial transcripts should not be permitted. In Re Grand Jury Investigation of Banana Industry, 214 F.Supp. 856 (D.Md. 1963);

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United States v. Gallo, 394 F.Supp. 310, 315 (D.Conn. 1975).

Count three (3) of the old indictment was unique in that it charged that in receiving two (2) payments for a single trip to New Orleans on behalf of the County and the American Society for Industrial Security, the defendant allegedly defrauded only the County and not, as in the other mail fraud counts, either the County or the other named private entity. This was so because the Executive Director of the Society informed the Assistant United States Attorney in charge that he did not care how many times the defendant was paid expenses; that the defendant did what was asked of him and that he was entitled to be paid according to agreement. At the trial, on direct examination, this individual changed his prior statement to the Assistant United States Attorney and testified that had he known the defendant was receiving expense payment from the County, he would not have paid the defendant. The veracity of this statement was effectively challenged on cross-examination.

Now, in the superseding indictment, count forty-five (45) charges the defendant with having allegedly defrauded the Society and not the County for payments received for this very same trip. In light of the possible knowing use of perjured testimony, a review is certainly called for. It is submitted that it was the burden of the Assistant United States Attorney to advise the grand jury of the questionable nature of this testimony. United States v. Gallo, supra, 394 F.Supp. at 315.

It is a purpose of the grand jury to stand between the prosecutor and the accused as an independent body, to evaluate the

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evidence and the credibility of witnesses and determine that the charge has some reasonable foundation. The grand jury is not a rubber stamp for the government. The Assistant United States Attorney in charge has stated that it is he who prepares the indictment in advance, and, without the grand jury having determined whether to indict at all, submits it to the grand jury, presumably with the preface that "here is the indictment which the evidence supports." (See transcript of proceedings, United States v. Cahn, 75-CR-645, January 16, 1976 at 54-57).

No matter what the government's reason was for securing a superseding indictment, having decided to do so, "the government was bound to follow the rules and not to attempt a loose, short-cut procedure fraught with deficiencies of constitutional dimension." United States v. Gallo, supra, 394 F.Supp. at 316. The defendant asks this court, pursuant to rule 6(e), and in accordance with the supervisory powers of this court over the conduct of grand jury proceedings, to allow the defendant to inspect the grand jury minutes. In the alternative, the defendant asks this court to make an in camera review of those proceedings. However, it is submitted that such an independent review by the court might overly burden the time and resources of the court; and it is submitted that the defendant, in this instance, would be in the best position to know if his rights were violated. United States v. Dornau, 356 F.Supp. 1091, 1100 (S.D.N.Y. 1973).

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POINT VI

THE DEFENDANT'S RIGHT TO A SPEEDY RETRIAL OF INDICTMENT 75-CR-645

On March 26, 1976, at a conference before Judge Platt, the defendant was asked if he was ready to proceed immediately upon the trial of the superseding indictment in accordance with the speedy trial provisions of 18 U.S.C. 3161.

The Court was informed by defendant's counsel that certain motions would be necessary and preparation would be required in order to proceed on the superseding indictment. the Court was of the opinion that the trial on the superseding indictment would be required to be commenced within 60 days of the declaration of the mistrial by Judge Dooling.

The Court inquired as to whether the defendant wished to waive his speedy trial rights in that regard. Defendant, after being told by the Court that he could not assert his rights to a speedy retrial of Indictment 75-CR-645, and waive his rights as to the superseding indictment at the same time, waived his rights.

It is submitted that the afore-mentioned rulings by the Court are not consistent with the speedy trial statutes, and that upon full consideration this conclusion should become self-evident.

Subdivision (e) of Section 3161 (Title 18 U.S.C.) provides a retrial after the declaration of a mistrial shall be commenced within 60 days from the date the action occasioning the retrial becomes final. The issue is what are the defendant's rights when a superseding indictment is returned?

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Under the rationale of Judge Platt, if a superseding indictment is returned on the 59th day following the declaration of a mistrial, the defendant must either proceed to trial on the next day upon the new indictment, or waive his speedy trial rights not only as to the superseding indictment but as to the superseded indictment as well.

It is submitted that such a problem could not even arise if the rationale contained in Point II, supra, is recognized by this Court. Moreover, it is submitted that this Court should see the inequity of requiring the defendant either to proceed to trial without opportunity to prepare or to waive his statutory and constitutional rights to a speedy retrial, solely by reason of the actions of the government in returning a superseding indictment.

For these reasons it is submitted that the Court should consider whether the defendant's prior "waiver" was validly made. If this Court concludes that such rights were waived in response to an erroneous interpretation of law, the defendant asks this Court to allow the defendant to properly assert his rights at this time.

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POINT VII

THIS CASE SHOULD BE DESIGNATED A "WESTBURY" CASE.

Rule 1.1 (b) of the Individual Assignment and Calendar Rules for the Eastern District provides that a criminal case may be designated a "Westbury" case if the crime was allegedly committed in whole or substantial part in Nassau County or if the interests of justice so require. At the conference before Judge Platt, the Court indicated that such a request to designate this case as a "Westbury" case, should be included within this motion.

All of the acts which the defendant is alleged to have committed within the Eastern District were, if committed, committed in Nassau County. Additionally, all of the witnesses, both prosecution and defense, reside in Nassau County, (except for those witnesses who do not live in the greater Metropolitan area). Several of the witnesses, particularly the defendant's character witnesses, are Judges or other officials in Nassau County, who would be required to leave their benches, or other official duties for a substantial period of time in order to travel to and from Brooklyn. Additionally, of course, the defendant resides in Nassau County and the designation of this as a "Westbury" case would be a great relief from one of the burdens imposed upon the defendant and his family by reason of this prosecution.

The Government voiced its initial objections upon the grounds that the Westbury facilities are not sufficient for this type of case. As far as the defendant can determine, this case is not of such length and does not require such courtroom machinery

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as would render the Westbury court insufficient. Moreover, it is the defendant's understanding that the facilities of the Nassau County Supreme Courthouse might be made available in order to remove any of the Government's objections if they are viewed as meritorious by this Court.

Of course, the defendant recognizes this to be a matter wholly within the discretion of this Court and recognizes its paramount interests and needs. What is hoped is that if this Court should determine that by trying this case in Westbury, the Court and the judicial processes would not be overly burdened or inconvenienced, the Court would accommodate the defendant and the witnesses.

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DEFENDANT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT

CONCLUSION

For the reasons herein above stated, the relief requested by the defendant should be granted.

Respectfully submitted,

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GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTIONS FOR DISMISSAL AND SEVERANCE.

RJD:JOD:sd
F. #

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - - - - - - - - - - - - - - X

UNITED STATES OF AMERICA

75 CR 645(S)

- against -

WILLIAM CAHN,

Defendant.

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GOVERNMENT'S MEMORANDUM OF LAW

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GOVERNMENT'S MEMORANDUM OF LAW

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- X

UNITED STATES OF AMERICA 75 CR 645

- against -

WILLIAM CAHN,

Defendant.

- X

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANT'S MOTIONS FOR DISMISSALS AND SEVERANCE

I. THE MAIL FRAUD COUNTS OF THE INDICTMENT SHOULD NOT BE DISMISSED.

Defendant presents a three-pronged attack in support of his contention that Counts 1-6, 8, 9 of the indictment (mail fraud counts) should be dismissed. Firstly, he argues that the requisite intent to defraud is absent in this case. Secondly, he contends that the alleged use of the mails by the defendant was insufficiently related to the fraud so as to place the matter within the purview of 18 U.S.C. Section 1341. Thirdly, he contends that "alternative pleading" renders the mail fraud

counts invalid.

A. The question of intent should properly be left for the jury to decide.

In support of his initial argument, defendant cites numerous cases which reaffirm the basic proposition that "the government [must] establish a specific intent to defraud on the part of the defendant in order to sustain a conviction." See United States v. Klein, 515 F.2d 751 (3rd Cir. 1975), and other cases cited at pp. 5-6 of defendant's memorandum of law. Defense counsel apparently seeks to place the instant case within the holdings of Klein et seq. by means of his unsworn assertions as to defendant's lack of intent, set forth at pp. 1-3, 7 of defendant's memorandum. While we agree with the basic proposition that one cannot be convicted of this or virtually any other crime without proof of the requisite intent, it is submitted that defendant's motion to dismiss is premature. Should the government, at trial, fail to adduce sufficient evidence of intent, a motion for a directed verdict of acquittal would then be properly the addressed to the Court.

B. The indictment properly sets forth the crime of mail fraud as defined by 18 U.S.C., 1341.

The main thrust of defendant's argument seems to be that the use of the mails was so remote to the alleged fraudulent scheme as to render the federal mail fraud statute inapplicable. Defendant relies principally upon the holdings of United States v. Maze, 414 U.S. 395 (1974); Parr v. United States, 363 U.S. 370 (1962); Kann v. United States, 323 U.S. 88 (1944). A reading of those cases, however, discloses that each dealt with a situation wherein stolen or unauthorized checks or credit cards were used to obtain money or goods. In each of these cases the mails were used long after the defendant had received the goods or money and had thereby consummated the scheme. Indeed, the use of the mails occurred only insofar as the corporate victim sent a bill or monthly statement to the individual(s) whose checks or credit card had been misappropriated. The Court, in each instance, found that it was immaterial to the respective defendant how the victim subsequently went about collecting its payment. See, e.g. Maze, supra 414 U.S. at 401. See also Kann, supra, wherein the Court's holding was based upon its conclusion that "It cannot be said that the mailings in question were for the purpose of executing the scheme as the statute requires." 323 U.S. at 94. Accord, United States v. Klein, 515 F.2d 751 (3rd Cir. 1975). Cf., however, King v. United States, 512 F.2d 353 (6th Cir. 1975), wherein the

defendant was convicted of mail fraud for having placed in the mails falsified applications for credit cards which were subsequently used by him to obtain property for which he apparently did not pay. There, the Sixth Circuit distinguished Maze on the ground that King had used the mails as a first step in the fraud. Also cf., United States v. Calvert, 523 F.2d 895, 904 (8th Cir. 1975), reh. den., 9/24//5, where Maze was again distinguished, on the ground that, as in the instant case, "the mailings and use of the wires here occurred before the scheme reached its hoped for fruition..."

The recent Henderson case (United States v. Henderson), 386 F. Supp. 1048 (S.D.N.Y. 1974), relied upon by defendant is readily distinguishable in that, unlike in the instant case, there existed a specific federal statute designed to prevent the particular evil alleged to have been perpetrated by the defendant. There, the defendant had been charged, inter alia, with having violated the federal mail fraud statute by mailing to the Internal Revenue Service a fraudulent income tax return. The Court, in granting Henderson's motion to dismiss the mail fraud charges, found that the existence of Title 26, United States Code, Section 7201 (income tax evasion) obviated the need for use of the much broader mail fraud statute. In the instant case, there is no such specifically applicable federal penal statute.

Epstein v. United States, 174 F.2d 754 (6th Cir. 1949) also relied upon by the defendant, is equally inapposite for the

reason that it dealt with a situation wherein the court found the existence only of constructive fraud rather than of actual fraud. Moreover, the Court held that no harm had occurred and that no fraud had been practiced.

Indeed, Post v. United States, 407 F.2d 319 (C.A.D.C. 1968), also relied upon by the defendant lends more support to the position of the government, here, than to that of the defendant. There, the founders of a country club had, in mail solicitations, made false representations as to the limited number of "life memberships" in their proposed club. By over-selling such memberships, the promoters reaped excessive profits which they ploughed into other enterprises rather than into the construction of the club in question. In reviewing the convictions, the Court of Appeals for the District of Columbia, in dicta, reaffirmed the proposition that actual rather than constructive fraud is required; however, the Court, in upholding the convictions, held that knowing use of a fiduciary position "to obtain secret profits at the expense of the corporation and its members would not only be a breach of that fiduciary duty but an act of fraud." 407 F.2d at 329.

Finally, it is submitted that the defendant's reliance upon United States v. Regent Office Supply Co., 421 F.2d 1174 (2nd Cir. 1970), is equally misplaced. There, agents of the defendant stationery company had utilized an

introduction to their sales pitch whereby they falsely represented that they were trying to unload an excess of inventory created by the death of a customer. The case was tried, without a jury, on a stipulated set of facts which set forth, inter alia, that the price for the goods was fair. Additionally, it appears that the quality of the merchandise was good.

The Second Circuit, in over-turning the verdict of guilty, found simply that the customers of Regent had not been harmed by the attention getting device used by Regent's salespersons. While the Court found that the "white lies" were "repugnant to standards of business morality", they did not "constitute a scheme to defraud or obtain money by false pretenses punishable under Section 1341." Almost parenthetically, however, the Court added that, "... this is not to say that we could not, on different facts or more specific proof, arrive at a different conclusion." 421 F.2d at 1179. Indeed the court found this to be a "unique case", tried on "skeletal evidence", wherein "no definable harm: was contemplated by the defendant. 421 F.2d at 1181. In short, the Court held that "The Regent - Oxford agents did not attempt to deceive their prospective customers with respect to the bargain they were offering; rather they gave a false reason for being able to offer the bargain." 421 F.2d at 1182. This contrasts sharply with the situation in the instant case wherein it is alleged that the defendant intentionally concealed from each of two 'buyers' of his 'services' the material fact that the other party was paying for his airfare and other expenses, knowing that had he told each the truth he would not

have been entitled to be doubly paid. Perhaps the two buyers would have apportioned the costs of the defendant's travel, or perhaps only one of them would have paid the expenses. The point is, however, that they were entitled to be apprised of the true state of affairs whereby each would have an opportunity to bargain with the defendant and/or with each other.

An analagous situation is found in United States v. Bush, 522 F.2d 641 (7th Cir. 1975). There, the defendant Bush served as Press Secretary and Director of Public Relations for the Mayor of the City of Chicago. Simultaneously, he served as the owner of a private firm (DAAI), which did extensive contract business with the City. The defendant took great pains to conceal from other city officials the fact that he was DAAI's owner. He took equally great pains, however, to use his position to influence those other officials to grant lucrative city contracts to DAAI. Through elaborate procedures, Bush "washed" DAAI's profits so that the money could not be readily traced to him. During that period of time, it was the policy of the Mayor of Chicago that every staff member and department head was prohibited from using his or her city position to personally benefit. To emphasize this policy, all such city officials were required to file statements of economic interest with the County Clerk, copies of which were filed with the Mayor's office.

In his 1972 and 1973 statements, Bush falsely concealed his interest in DAAI, thus providing the basis for the mail fraud indictment under which he was subsequently convicted.

On appeal, Bush raised issues identical to those urged

for dismissal by the defendant William Cahn. His primary argument was that he was "improperly and unfairly convicted of a non-crime," id at 643. More specifically, he contended that the mail fraud statute had "no real application to the facts of this case; and, further, that no judicial authority had ever gone this far in extending the mail fraud statute." id at 646.

In upholding Bush's conviction, the Court noted that:

> "In recent years in this Circuit and across the country it has become well established that the mail fraud statute is violated when some or all of the following factors are present. A duty to disclose an interest with a concomitant failute to do so; an attempt to cover-up through false pretenses; a taking of money or property or rights of another through the use of kickbacks, extortion, bribery, tax evasion, perjury, or a violation of some state of federal statute; a use of the United States mails [citations omitted]. id at 646.

On his appeal, Bush relied upon evidence adduced at trial which had demonstrated that the city did not lose money on the contract which, indeed, was said to have been "one of the best in the country". id, at p. 648. The Seventh Circuit, however was unconvinced by this argument:

> "First of all, if the city had known of Bush's interest it might have been able to obtain a better contract. Secondly, the mail fraud statute seeks to prohibit fraudulent conduct regardless of ultimate loss or damage to the victims of the crime [citations omitted]... The deal may have been a good one for the city; the problem is that Bush deprived the city and its officials of making a better

> deal, of the best deal possible, in order that he might share in the profits." id at p. 648.

See also United States v. George, 477 F.2d 508 (7th Cir.), cert. denied. 414 U.S. 827; United States v. Isaacs, 493 F.2d 1124, 1150 (7th Cir. 1974).

The same argument attains here, in that the NDAA and the County were similarly deprived of the opportunity to strike a better deal.

As Judge Learned Hand so aptly stated in United States v. Rowe, 56 F.2d 747, 749 (2d Cir. 1932):

> "A man is none the less cheated out of property, when he is induced to part with it by fraud, because he gets a quid pro quo of equal value. It may be impossible to measure his loss by the gross scales available to a court, but he has suffered a wrong; he has lost his chance to bargain with the facts before him. That is the evil against which the [mail fraud] statute is directed."

C. The disjunctive pleading in the Indictment does not invalidate the mail fraud counts.

Defendant's third and final argument in support of a dismissal of Counts 1-6, 8, 9 is that certain disjunctive phraseology therein renders those counts defective. In support of this contention, he relies upon United States v. Malinowski, 347 F. Supp. 347 (E.D. Pa. 1972), and a host of other cases, all of which hold essentially that "an indictment should use the conjunctive term 'and' to enumerate the means rather than the disjunctive term 'or' "(emphasis supplied).

Conceding arguendo that the government cannot charge several or alternate offenses in a single count, it is readily seen that the present case falls without the scope of Malinowski, et al.

Here, the defendant is charged in each of the several mail fraud counts with having used one means, the United States mails, with intent to defraud either or both of two victims. Thus, the use of the disjunctive term 'or' applies only to the intended victims, here - not to the means used to perpetrate the crime. Indeed it is unimportant for the jury to determine which of the two alleged victims the defendant intended to defraud, so long as they determine that his intent was directed towards one or the other or both, i.e. a general criminal intent.

We would analogize this to a situation wherein an individual insures his automobile with 10 different insurance companies, falsely certifying to each that it is the sole insurer (See, e.g. State Farm Fire and Casualty Company v. Herron, 269 F.2d 421 (4th Cir. 1959, where a civil plaintiff was denied recovery against one of two insurers of his home, because of his wilfully false misrepresentations regarding a lack of other insurance). If such an individual were to sustain a loss and were to mail 10 separate claims forms to the respective insurers, a prosecutor would face an impossible task if the defendant Cahn's arguments were accepted here. It is submitted that an indictment would be properly drafted in such a case wherein it was alleged simply that the defendant, by use of the mails, sought to defraud

Insurer A or Insurer B, etc. Clearly, the defendant would have no concern as to the pro rata share of the loss which was being inflicted upon one or more of the companies. Similarly, in the instant case, it will be established at trial that the defendant Cahn did not contemplate which of the two entities would have refused partial or total payment on his claims had both known the truth. It is sufficient, we submit, that the government allege and prove that his intent was directed towards an indefinite class of victims, so long as the pleadings and proof clearly set forth a definite means used to carry out the crime, as required by Malinowski, et al.

GOVERNMENT'S MEMORANDUM OF LAW

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

WILLIAM CAHN,

Defendant.

- - - - - - - - - - - - - - - - - - - X

75 CR 645(S)

GOVERNMENT'S MEMORANDUM OF LAW

DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

James O. Druker
Assistant U.S. Attorney
(Of Counsel)

GOVERNMENT'S MEMORANDUM OF LAW

POINT I

a) Defendant's initial contention is that indictment number 75 CR 645(S) should be dismissed in its entirety, for failure to charge an offense against the United States. This argument was made, in substance, by the defendant, and rejected by the Court (Hon. John F. Dooling, Jr.) with reference to the original indictment in this case (75 CR 645). (See also the pertinent portion of the governments earlier memorandum of law, annexed hereto as "A").

In his renewed effort to have the indictment dismissed, defendant relies on a series of insurance cases in which the Courts allowed injured parties to obtain multiple reimbursement for expenses incurred as a result of accident or injury.

These cases are readily distinguishable on a number of grounds, not the least of which is that they dealt with questions of contractual construction. Moreover, there appears to have been no concealment by the various insureds of their multiple insurance policies.

b) Counts One through Three of the indictment charge - in near identical language - that the defendant WILLIAM CAHN did knowingly and wilfully make and cause to be made false statements within the jurisdiction of the Law Enforcement Assistance Administration by submitting, to various Law Enforcement Assistance Administration funded organizations applicants containing false statements and that the defendant was payed with Law Enforcement Assistance Administration funds. Counts Four through Ten in substantially similar language charge the defendant with concealing material facts in matters within the jurisdiction of the Law Enforcement Assistance Administration. The same statute, 18 U.S.C. §1001 is alleged to have been violated in Counts One through Ten.

A. Judge Dooling's dismissal of Count Seven of the original indictment.

Count Seven of the original indictment contained an alleged violation of 18 U.S.C. §1001 which read as follows:

> On or about the 25th day of March 1974, in the Eastern District of New York, WILLIAM CAHN, the defendant, wilfully and knowingly falsified a material fact in a matter within the jurisdiction of the Law Enforcement Assistance Administration (hereinafter referred to as "LEAA"), an agency of the United States, in that he falsely certified and stated to the National Center for Prosecution Management, an LEAA funded organization, that he was not receiving any other reimbursement for a $246.80 claim for airfare, expenses whereas, as he then well knew, he had, on or about March 20, 1974, submitted a claim to the Comptroller of Nassau County, New York, in which he sought and for which he received reimbursement in the same amount for the same airfare expenses. (Title 18, United States Code, Section 1001)

In holding that the allegation was insufficient on its face to charge a violation of 18 U.S.C. 1001, Judge Dooling observed:

> Whether Count 7 can be saved as a Count directly under Section 1001 was not really argued. The Government's brief simply assumed that it was enough that the National Center for Prosecution Management was an LEAA funded organization. But an entity hardly becomes an agency or department of the United States because it is funded under such an LEAA program, and, in the light of only authority so far seen, it must be concluded that the Count is not sufficient under Section 1001 standing alone.

We observe at the outset that the instant indictments allege more than that the private organizations to which the defendant submitted his claim were funded by

the Law Enforcement Assistance Administration. The indictment goes on to allege that monies which were paid to the defendant, in response to his false or misleading applications, were Law Enforcement Administration funds.

More significantly, we did not call to Judge Dooling's attention nor did he discuss the leading opinion of the Court of Appeals for the Second Circuit in United States v. Candella, 487 F.2d 1223 (C.A. 2, certiorari denied _____U.S._____ (1973), which followed the long pervailing view that a statement filed with a non federal agency - which dispenses federal funds - may still be deemed a statement within the jurisdiction of an agency of the United States. See also, United States ex rel _____ v. Hess, 317 U.S. 537, 543-544 (1942); United States v. Lange, 528 F.2d 1280, 1287, n.11 (C.A. 5, 1976). These cases we submit are plainly apposite here and require rejection of the defendant's claim that Judge Dooling's decision with respect to Count Seven of the earlier indictment requires dismissal of Counts One through Ten. Indeed, the defendant himself concedes at pp. 13-14 of his memorandum that "a false statement need not be directly presented to a government agency in order for a defendant to be convicted under Section 1001."

B. The Additional Grounds for Dismissal.

As an additional ground for dismissal, the defen-

dant alleges that Counts One through Ten are insufficient because they fail to allege that he was aware that the various organizations to which he submitted false or misleading claims were funded by the Law Enforcement Assistance Administration or that he was paid with Law Enforcement Assistance Administration funds. We submit that the allegation in the indictment that the defendant knowingly and willfully either concealed material facts, or made false statements, within the jurisdiction of an agency of the United States, which tracks the language Section 1001, plainly encompasses this allegation.

More significantly, we submit, the defendant misconstrues the thrust of United States v. Candella, supra. That case does not hold that it is an element of the offense of violating Section 1001 that the defendant knew of the relationship between the private agency (to which he submitted the false statement) and the federal agency. Rather, it and other cases have held that, in order to establish the required element that the false statement was within the jurisdiction of an agency of the United States, it must be proven, inter alia, that the defendant was aware of the relationship between the private agency and the federal agency (487 F.2 1225-1226). See also, United States v. Lange, supra, 528 F.2d. at 1287, n.11.

Accordingly, it is submitted that the motion to dismiss Counts One through Ten should be denied.

POINT II

Appellant next contends that a trial on the superseding indictment is barred by the double jeopardy and due process provisions of the Fifth Amendment.

A similar argument was recently rejected by the Supreme Court in United States v. Dinitz, _____U.S._____, 18 Cr L 3087 (March 8, 1976), wherein the Court, inter alia, adopted the following holding of United States v. Jorn, 400 U.S. 470, 484-485.

> ". . . Thus, where circumstances develop not attributable to prosecutorial or judicial overreaching, a motion by the defendant for mistrial is ordinarily assumed to remove any barrier to reprosecution, even if the defendant's motion is necessitated by prosecutorial or judicial error . . ."

With regard to defendant's purported quote from Ashe v. Sevenson, 397 U.S. 436, 447, not only is the quotation itself inaccurate, but additionally it is taken out of context. In the instant case, defendant moved for and was granted a mistrial based upon the announced failure of the jury to arrive at a verdict. Hence, none of the issues were resolved and no collateral estoppel attains here.

In Ashe v. Sevenson, on the other hand, the prosecution tried defendant for the robbery of one of six alleged victims. Defendant was acquitted. The State then sought to retry defendant for the simultaneous robbery of

a second of the six victims. The Court in holding that the federal rule of collateral estoppel rendered a second trial impermissible, stated:

> "In this case the State in its brief has frankly conceded that following the petitioner's acquittal, it treated the first trial as no more than a dry run for the second prosecution. 'No doubt the prosecutor felt the state had a probable case on the first charge and, when he lost, he did what every good attorney would do- he refined his presentation in light of the turn of events at the first trial.' But this is precisely what the constitutional guarantee forbids." 397 U.S. at 447.

Nowhere does the Court suggest that, after a hung jury, the government is limited to the same evidence adduced at the first trial - let alone that the defendant cannot be tried on a supperseding indictment. To the contrary "the Government is not limited at a new trial to the evidence presented at the first trial, but is free to strengthen its case in any way it can by the introduction of new evidence". United States v. Shotwell Manufacturing Company, 355 U.S. 233, 243 (1957). Similarly, new counts may be added, see United States v. Jasso, 442 F.2d 1054 (C.A. 5 1971).*

* Although United States v. Shotwell, supra, and United States v. Jasso, supra, referred to a new trial after a reversal of an earlier judgment of conviction, its rationale is equally applicable to a new trial after a mistrial. See United States v. Mischlich, 310 F. Supp. 669, 672 (D.N.J. 1970), aff. 445 F.2d 1194 (C.A. 3, 1970), cert. den. 404 U.S. 984.

POINT III

Defendant's argument in support of dismissal of the original indictment is premature. Double jeopardy could not conceivably arise regarding either indictment until the issues have been determined on the other indictment. Moreover, the Government's position is buttressed by the very two decisions cited in Defendant's memorandum of law, page 27 (Strewl and Bowles).

POINT IV

Defendant next contends that the date, September 14, 1969, alleged as the starting date of the scheme to defraud should be stricken.

This argument must fail for the dual reasons that:

1) It is proper to extend the starting date of a scheme beyond the stature of limitations, so long as the indictment alleges offenses committed in furtherance of that scheme within the statutory period. See, e.g. United States v. Gross, 416 F.2d 1205, 1210 (8th Cir. 1969); United States v. Andreas, 458 F.2d 491 (8th Cir. 1972);

2) the motion is premature, and should be granted only if the government's evidence at trial fails to establish that the scheme commenced on or about September 14, 1969.

POINT V

Defendant's motion to inspect the Grand Jury minutes should be denied for the reason that it is premised upon the erroneous assumption that a new Grand Jury hearing no live witnesses rendered the true bill in 75 CR 645(S). The facts are otherwise.

GOVERNMENT'S MEMORANDUM OF LAW

POINT VI

Defendant further contends that his waiver of the sixty day requirements of the Second Circuit's speedy trial rules was involuntary.

We submit that this argument is specious. Defendant's waiver was knowingly and voluntarily made on the record in the presence of and upon the advice of counsel.

POINT VII

Defendant's motion to transfer the trial to Westbury should be denied for the reasons set forth in our affidavit in United States v. Trotta, No._____, and in the order of Judge Dooling on January 21, 1976, denying the same motion.

CONCLUSION

Defendant's motions should be denied in all respects for the reasons set forth previously herein.

Respectfully submitted,

DAVID G. TRAGER
United States Attorney
Eastern District of New York

EDWARD R. KORMAN and
JAMES O. DRUKER
Assistant U.S. Attorneys

AFFIDAVIT OF EDWARD R. KORMAN IN OPPOSITION TO DEFENDANT'S MOTION TO SCHEDULE TRIAL IN WESTBURY ANNEX.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

GERARD P. TROTTA,

74 CR 681

Defendant.

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

EDWARD R. KORMAN, being duly sworn, deposes and says:

I am Chief Assistant United States Attorney for the Eastern District of New York. I make this affidavit in opposition to the application of the defendant to schedule the instant case for trial in the Westbury Annex of the United States District Court for the Eastern District of New York.

The United States is opposed to a trial of the instant indictment in the Westbury Annex principally because facilities at the private office building at 900 Ellison Avenue, in which the Annex occupies part of one floor, are wholly inadequate to the trial of most ordinary criminal cases, much less a case of significant public interest. We have annexed

AFFIDAVIT OF EDWARD R. KORMAN IN OPPOSITION TO DEFENDANT'S MOTION TO SCHEDULE TRIAL IN WESTBURY ANNEX

hereto an affidavit of Edward Hershey (App. A, infra), a reporter who covered the trial of Frank J. Antetomaso and Angelo D. Roncallo (No. 74 Cr. 287) for Newsday, and an affidavit of David O'Flaherty (App. B., infra), a Deputy United States Marshal, assigned to duty at that trial. These affidavits describe the circumstances that prevailed at that trial.

These circumstances, which can only be described as deplorable, are largely the consequence of the nature of the facilities at the Westbury Annex. The size of the courtroom in Westbury, which seats only forty people, is substantially smaller in overall size than the huge courtrooms in the United States Court House in Brooklyn. The corridor outside the courtroom is very narrow and the walls paper thin.

These conditions, combined with the fact that the Annex occupies only part of a single floor of a private office building (we are advised that space on the floor has recently been rented to a travel agency), and the large numbers of persons who can be expected to attend the trial of significant public interest, make conditions almost intolerable and make a trial which is fair both to the United States and the defendant impossible to achieve. And it can no longer be doubted that "[t]he public has an overriding interest that justice be done in a controversy between the government and

individuals and has the right to demand and expect 'fair trials designed to end in just judgments'." United States v. Tijerina, 412 F.2d 661, 666 (C.A. 10), certiorari denied, 396 U.S. 990.

The problems caused by the nature of the facilities are compounded by the fact that the Annex operates on an ad hoc basis. There are no permanent district court personnel, no permanent court reporters, and a totally inadequate law library. Moreover, the ad hoc nature of the operation make it necessary to rent buses to transport prospective jurors the twenty-five miles from the court house in Brooklyn where they report for jury duty. When a prospective juror is excused, he cannot be sent to another courtroom, but must waste the entire day waiting for the bus to take him back to Brooklyn. Such a waste of a citizen's time (not to say the money expended for busing), cannot but have the effect of discrediting the entire criminal justice system in the eyes of the dozens of prospective jurors put through the ordeal.

Moreover, it must be noted that the Westbury Annex is not accessible by public transportation, thus posing a burden on jurors, witnesses and attorneys, as well as other court personnel. This burden will be particularly exacerbated beginning October 14, 1974, when Roosevelt Raceway, which

AFFIDAVIT OF EDWARD R. KORMAN IN OPPOSITION TO DEFENDANT'S MOTION TO SCHEDULE TRIAL IN WESTBURY ANNEX

adjoins the Annex, reopens. We are advised that, by late afternoon on days when Roosevelt Raceway is open, traffic conditions in the area are all but impossible.

Under these circumstances, it is not surprising that four of the eight active judges of this court who live in Nassau and Suffolk counties have chosen not to sit in Westbury, and that hardly any criminal (or civil) trials are conducted there. Indeed, Chief Judge Mishler recently stated that (App. C, infra): "The fact is that the [Westbury] building is inadequate for all types of cases we have here * * *. There's no question about it." [Newsday, October 6, 1974, p. 7]. (I am advised that in context Chief Judge Mishler's statement indicated his belief that the Westbury Annex was inadequate for many [but not all] types of cases).

These considerations aside, the defendant has made no convincing showing why these burdens and inconveniences should be suffered. The United States Court House in Brooklyn is only approximately thirty miles from the Town of Oyster Bay where defendant resides. This travel, for a relatively short trial, is not a major inconvenience to the defendant. Indeed, at least two district court judges (Judges Travia and Platt), along with numerous personnel who work in the court house,

AFFIDAVIT OF EDWARD R. KORMAN IN OPPOSITION TO DEFENDANT'S MOTION TO SCHEDULE TRIAL IN WESTBURY ANNEX

make daily trips from distances on Long Island greater than that between the Town of Oyster Bay, and the United States Court House in Brooklyn. Moreover, neither of the defendant's lawyers reside in Nassau County or Suffolk County. There is thus no justifiable reason to conduct a trial under the same carnival-like atmosphere, and inconvenience, which prevailed at the last trial conducted at the Westbury Annex.

Edward R. Korman

Edward R. Korman

Sworn to before me this
4th day of November, 1974.

Olga S. Morgan

OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501955
Qualified in Kings County
Commission Expires March 30, 19[illegible]

EXHIBIT A, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN.

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F. #743447

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

74 CR 681

GERARD TROTTA,

Defendant.

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

EDWARD HERSHEY, being duly sworn, deposes and says:

1. I am a newspaper reporter employed by Newsday, Incorporated, which publishes Newsday. From May 2, 1974, to May 17, 1974, I covered the trial of FRANK J. ANTETOMASO and ANGELO D. RONCALLO (No. 74 CR 128) which took place in the Westbury, Long Island Annex of the United States District Court for the Eastern District of New York.

2. I have been asked to submit this affidavit for the purpose of describing the circumstances which prevailed during the course of the trial as they were affected by the size of the courtroom and the other limited facilities in the Westbury Annex.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN

3. At the outset of the case two busloads of jurors arrived at the Westbury Annex. While United States District Judge Neaher conducted the voir dire of individual veniremen in his chambers, many of the others were forced by the limited seating available in the courtroom to mill about the narrow crowded corridor outside the courtroom. There they mingled not only with members of the press but with many spectators including the friends and family of the defendants. Indeed, at one point I observed a relative of one of the defendants offer a cigarette to a prospective juror.

4. During the trial the courtroom was always filled to capacity with representatives of the media and spectators including many who were obviously friends and relatives of the defendants. Because of the size of the courtroom, the first row of the gallery was very close to the jury box, and those sitting in the first row could almost reach out and touch the jurors. As a consequence, on numerous occasions, the Deputy United States Marshals were forced to warn the spectators in the gallery that their whispered conversations could be overheard in the rest of the courtroom. Moreover, because the gallery was packed largely with the family, friends and political supporters of the defendants, there were frequent comments, exclamations and other reactions which were apparently perceptible to the jury.

EXHIBIT A, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN

5. During the deliberations spectators milled around the corridor and the Deputy United States Marshals appeared concerned that even hushed conversations could be heard through the closed door of the jury room.

6. In addition to the conditions created by the small courtroom and narrow corridor of the Westbury Annex, the office building at 900 Ellison Avenue, in which it is located, is not readily accessible to public transportation; and I was told by one of the jurors that the verdict was delayed overnight because of the concern expressed by some jurors about getting home.

7. I believe that the trial of Mr. Gerard Trotta would not ordinarily generate as much public interest as the trial of Congressman Roncallo. Nevertheless, because of its close relationship to that case, and because Mr. Trotta is charged with abusing his office as Commissioner of Public Works to extort political contributions, it is very likely that there will be substantial media coverage; and that the Westbury Annex

EXHIBIT A, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN

will again be packed with media representative and probably with friends, family and political supporters of the defendant Gerard Trotta.

Edward Hershey

Edward Hershey

Sworn to before me this
23 day of September, 1974.

Olga S. Morgan

OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501965
Qualified in Kings County
Commission Expires March 30, 1975

EXHIBIT B, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN.

DGT:ERK:rb
F. #743447

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
- - - - - - - - - - - - - - - - - - -x

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

GERARD TROTTA,

74 CR 681

Defendant.

- - - - - - - - - - - - - - - - - - -x

STATE OF NEW YORK)
) ss.:
COUNTY OF KINGS)

DAVID O'FLAHERTY, being duly sworn, deposes and says:

1. I am a Deputy United States Marshal. From May 2, 1974, to May 17, 1974, I was assigned to duty at the trial of FRANK J. ANTETOMASO and ANGELO D. RONCALLO (No. 74 CR 128) which took place in the Westbury, Long Island Annex of the United States District Court for the Eastern District of New York.

2. I have been asked to submit this affidavit for the purpose of describing the circumstances which prevailed during the course of the trial as they were affected by the size of the courtroom and the other limited facilities in the Westbury Annex.

EXHIBIT B, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN

3. During the trial the courtroom was always filled to capacity with representatives of the media and spectators, including many who appeared to be friends and relatives of the defendants. Because of the size of the courtroom, the spectators' gallery was very close to the jury box. As a consequence, on numerous occasions, I and other Deputy United States Marshals were forced to warn the spectators in the gallery that their whispered conversations could be overheard in the rest of the courtroom. Moreover, because the gallery appeared to be filled largely with the family, friends and supporters of the defendants, there were frequent comments, exclamations and other reactions which were perceptible in the courtroom. This was particularly apparent during the testimony of William Cosulich, the principal witness for the United States.

David O'Flaherty

David O'Flaherty

Sworn to before me this
25th day of September, 1974.

Olga S. Morgan

OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 1975

EXHIBIT C, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN.

NEWSDAY, SUNDAY, OCTOBER 6, 1974

7

A Courthouse in the Doghouse

By Edward Hershey

Westbury—The U.S. Courthouse Annex, welcomed by officials in 1971 as a major benefit for Long Island, has become a white elephant that aids only its landlord, the Madison Square Garden Corp., a public corporation.

By 1976, the federal government will have poured almost $1,030,000 in rent and renovation money into the annex, which occupies the top floor at 900 Ellison Ave. But there is little indication that the two courtrooms, three judges' chambers, U.S. attorney's offices and other facilities there will ever be put to much practical use.

Jacob Mishler, chief federal judge for New York's Eastern District, said in an interview last week that the Westbury annex has become "an embarrassment" to the district. Other judges, lawyers and even defendants agree. In three years it has been the site of only one major federal trial, the one in which Rep. Angelo Roncallo (R-Massapequa) was acquitted in May. As a result of that experience, the U.S. attorney has asked to have the extortion trial of Gerard Trotta, former Oyster Bay Town public works commissioner, switched to Brooklyn, saying that the facilities at the Long Island annex are unsuitable. U.S. District Judge Edward Neaher is expected to rule on the motion Friday.

Mishler said that U.S. District Judge Anthony Olivia of Glen Cove, who sat at Westbury for about a year, said he would never return. "He complained about the proximity of the courthouse to the racetrack [Roosevelt Raceway] and its effect on decorum," Mishler said. Other judges have complained about inadequate staffing and the geographic isolation of the annex.

Several elements have combined to render the annex virtually useless except for bankruptcy proceedings and probation department interviews. And some of these factors threaten to limit activity if the courthouse annex is transferred, as proposed, to the federal building planned for Mitchel Field.

The most frequently cited drawbacks are poor security provisions, an inadequate law library, lack of clerical personnel, isolated location and undersized courtrooms. Four of the district's eight full-time judges live east of the Nassau County line, but none has chosen to use the annex.

District policies regarding the assignment of judges and selection of juries are another problem, one that would affect operations at a Mitchel Field facility. Judges are assigned at random to prevent judge-shopping by litigants. A jurist permanently assigned to Long Island has to handle a normal complement of Brooklyn, Queens and Staten Island cases, which make up at least two-thirds of the district's calendar. Jurors are empaneled on a districtwide basis, in an effort to prevent socio-economic imbalances that could result from Brooklyn-only or Long Island-only juries. Thus, jurors would have to be transported to Westbury, as in the Roncallo trial.

"The fact is that the building is inadequate for all types of cases we have here," Mishler said. "There's no question about it." But the chief judge said he still hopes he can assign some cases to Westbury between now and 1976, when the government's lease will expire.

At a time when judicial authorities say the criminal justice system is desperately strapped for funds, the circumstances surrounding a governmental expenditure of about $915,000 for a largely unused facility seem to be enmeshed in bureaucracy. Within the bureaucracy, there is some finger-pointing. Mishler said that the Westbury site was selected only after the General Services Administration offered it to the

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF EDWARD R. KORMAN

district's judges on a "this or nothing basis." But a regional spokesman for the GSA said that the site was the judges' idea and that the GSA merely handled the technical aspects of the building's rental and conversion.

Mishler's predecessor as chief judge, Joseph C. Zavatt of Garden City, a prime proponent of the annex who retired last October after three years in Westbury, maintains that all obstacles could be overcome if district judges really wanted the facility to operate effectively.

A Long Island federal court annex was first established in county-owned facilities in Mineola in 1958. But within a year, the county reclaimed its space for the expansion of Nassau State Supreme Court. Three years later, the federal government agreed to rent 18,607 square feet at 960 Ellison Ave. from Roosevelt Properties Inc., which has since been formally merged with its parent company, Madison Square Garden Inc. The cost was about $270,063 for construction of courtroom facilities and $140,856 a year in rent for five years.

George Morton Levy, a Roosevelt Raceway executive who was instrumental in renting the Westbury facilities to the GSA, said that if he had been told a year ago that the annex was not used, he might have been able to arrange for an early termination of the government's lease. "We had another tenant who was interested" and who has since gone elsewhere, Levy said. The U.S. is paying $8 a square foot, top dollar in a lessee's market that has seen the price of office space plummet by several dollars a square foot in Nassau. The building on Ellison Avenue has other governmental tenants. The State Department of Motor Vehicles occupies two bottom floors and the Nassau County Social Services Department is preparing to take over the third floor.'

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

-against- 75-CR-645 (S)

WILLIAM CAHN,

Defendant.

- -x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
APR 20 1976
TIME A.M.
P.M.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THE INDICTMENT AND OTHER REQUESTED RELIEF.

Respectfully submitted,

WILLIAM CAHN
Attorney for Defendant
Office & P. O. Address
278 Old Country Road
Mineola, New York, 11501
(516-747-7616)

NEIL R. CAHN

(of counsel)

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT I

NOT ONE OF THE FORTY-SIX (46) COUNTS OF THE SUPERSEDING INDICTMENT CHARGES A CRIME.

The government states that the arguments raised in the defendant's memorandum were rejected by Judge Dooling in the motion to dismiss the superseded indictment. To the contrary, the Court's interpretation of the mail fraud and false statement statutes vis a' vis the factual allegations contained in that indictment support the dismissal of each of the 46 counts of the superseding indictment.

First, Judge Dooling dismissed the one and only false statement count. (Discussed infra). Second, that essential allegation on which the Court allowed the mail fraud counts to stand (i.e. the defendant's knowledge that neither the County nor the second entity named in each count would have permitted the defendant to obtain double reimbursement) is absent from each of the 36 mail fraud counts contained in the superseding indictment.

(a) The mail fraud counts:

The government cites no authority, whether case law or statute, federal or state, in which payment from two entities for the same expense has been held to be criminal. Not even one civil case is cited in which recovery of such expense payments was denied on that basis.

Rather, the government contents itself to "readily" distinguish the insurance cases offered by defendant which recognize the legally enforceable right to obtain two payments for the same

expense where the agreements between the parties are not otherwise. The government argues that those cases deal with questions of contractual construction and are not here relevant.

It should first be noted that it was the government who sought to analogize the situation presented herein to insurance contract litigation. At page 10 of its memorandum in opposition to the motion to dismiss the superseded indictment, (incorporated by reference herein), the government cites State Farm Fire and Casualty Company v. Herron, 269 F.2d 421 (4th Cir. 1959). In that case the Court of Appeals reversed a District Court decision, allowing recovery of a second payment for expenses, on the basis of the insured's affirmative misrepresentation concerning his lack of other insurance and the presence in the State Farm contract of an exclusionary or "other insurance" clause. (To the best of defendant's knowledge, the insured was not thereafter prosecuted for mail fraud). That case is consistent with the general rule that absent an express and unambiguous exclusion in the contract, payments of expenses will be enforced despite the fact that the payee has been able to obtain payment elsewhere.

Nonetheless, the government summarily concludes that the issues presented herein do not involve contractual construction. It is submitted that the essence of this case involves the agreements or contracts between the defendant and the private entities named. It cannot be disputed that a contract arose when a private entity asked the defendant to attend a conference or give a lecture, in exchange for which the entity promised to pay the price of the defendant's airfare, hotel accomodations, etc. The defendant, having performed, was entitled to payment. Certainly, if not paid,

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2 COUNTY ROAD

the defendant could sue the private entity, in contract, to enforce the promise that was made to him in exchange for his performance of services.

The government next attempts to distinguish those cases on the ground that "apparently" there was no concealment by the various Plaintiffs of their multiple insurance policies, or alternative sources of payment. Concealment, if present, was not discussed by the courts, and, it is submitted, the issue was not relevant. An individual is under no duty to disclose his motives or gains when entering into a contract. Only where such motives or gains are affirmatively made a part of the contract or the inducement thereto, do they become relevant to the enforceability of the contract.

Judge Dooling did hold the allegations of the superseded indictment, if true, to constitute a crime. However, as revealed by the third element of his charge and the order dated January 9th, 1976, criminality was predicated upon the defendant's alleged knowledge that he was prohibited from receiving two payments. According to the Court, as it was alleged the agreement prohibited two payments, and the defendant allegedly knew such, implicit in presenting a claim was a representation of no other payment. If such an implicit representation was false and the defendant wrongfully obtained monies thereby by use of the mails, the offense was established.

Here no prohibition is alleged. The contracts between the defendant and the private entities are not alleged to have excluded payment, if payment was received from another source. Moreover,

the defendant's knowledge of the prohibition is not alleged. Judge Dooling in his charge recognized that knowledge of the prohibition was an essential element of the "crime". While the defendant disputes the Court's interpretation and extension of the mail fraud counts to the allegations of the superseded indictment, even under his interpretation, the superseding indictment must fail. Two essential elements have not been alleged: The prohibition and knowledge thereof.

In its memorandum in opposition to the dismissal of the superseded indictment, the government attempts to analogize this case to three recent Seventh Circuit decisions. The government places primary emphasis upon United States v. Bush, 522 F.2d 641. (7th Cir. 1975). There, the court noted that a mail fraud conviction could be sustained where, in addition to the use of the mails to effectuate the scheme, there existed:

> "A duty to disclose an interest with a concomitant failure to do so; and attempt to cover up through false pretenses; a taking of money or property or rights of another through the use of kickbacks, extortion, bribery, tax evasion, perjury, or a violation of some state or federal statute . . . " 522 F.2d 646.

The government cites no authority to support the creation of a duty to disclose the possible reimbursement from the County. The government alleges no lies, misrepresentations, or exaggerations of the truth. There is no recognizable criminal conduct or violation of state or federal statute.

The defendant in Bush was convicted for lying on a City-required form concerning his interest in businesses with which the City had contracts, as well as for the knowing violation of a City policy forbidding such interests, his affirmative misrepresentation

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0 COUNTRY ROAD

to City officials concerning his non-interest in the company he owned, and the circuitous method of payment used to obtain monies that he was legally forbidden to receive. In United States v. George, 477 F.2d 508, (7th Cir. 1973), cert. denied, 414 U.S. 827, the defendant was convicted for receiving kickbacks in the face of a company anti-conflict of interest policy and for breaching his legal duties. In United States v. Isaacs, 493 F.2d 1124, (7th Cir. 1974) the defendant was convicted for secret profit-taking by means of diversion of state funds, bribery, and corruption. Also cited is United States v. Rowe, 56 F.2d 747, (2d Cir. 1932), in which the defendant was convicted for making fraudulent promises, affirmative misrepresentations, and lies in an attempt to wrongfully obtain monies.

Nothing is alleged in this indictment other than that the defendant took advantage of his legally enforceable rights. As the contracts between the defendant and the private entities could legally be enforced by the defendant, it is submitted it could not have been criminal for defendant to enter those contracts or to recover thereon. The mail fraud counts should be dismissed.

(b) The false statement counts:

The defendant seeks dismissal of counts 1 through 10, the false statement counts, on two grounds. First, as was held by Judge Dooling, a false statement charge involving the LEAA, requires for its foundation a violation of 42 U.S.C. 3792. Second, it is contended that any false statement charge where the statement is not made directly to or material facts are not concealed directly from a federal agency, must allege the jurisdictional nexus between

the private entity to which the false statement is made or from which the material fact is concealed and the government agency, the defendant's knowledge of that nexus, and the defendant's use of the misrepresentation or concealment to affect agency action.

The government has not disputed the point that the false statement charges require underpinning from 42 U.S.C. 3792. Neither does it dispute Judge Dooling's conclusion that the facts alleged in the superseded indictment could not support a Section 3792 case. It is not argued that the fact that the defendant may have been paid with LEAA funds brings the charges within Section 3792. Having not disputed Judge Dooling's conclusion, the government apparently concedes the dismissal of the false statement counts on that ground.

The government's sole efforts in its opposing memorandum are directed at demonstrating that the inclusion of the allegation that the defendant was paid with LEAA funds (although it is not alleged what proportion of government money was used to pay the defendant's claims), is sufficient to satisfy the defendant's second argument.

At page 4 of its memorandum, the government states: "The indictment goes on to allege that monies which were paid to the defendant, in response to his false or misleading applications, were Law Enforcement Administration funds." That is not what the indictment alleges. There is absolutely no connection made in the indictment between the acts of the defendant and the LEAA. It is not alleged that the defendant's claims were paid with LEAA funds in response to or on the basis of his "false or misleading applications." Moreover, it is not alleged that the defendant knew that

he was to be paid with LEAA funds, or knew that his application would be used in some way by the private entity in dealing with the LEAA. It is because of the absence of such causal allegations, which the government apparently believes are present in the indictment, that the defendant asks this court to dismiss the false statement counts.

The government goes on to state that the defendant has misconstrued the thrust of United States v. Candella, 487 F.2d 1223 (2d Cir. 1973), cert. denied 415 U.S. 977. The defendant interpreted the Second Circuit's opinion as holding that where it is not alleged that the false statement was made directly to a government agency, it must be proven, inter alia, that the defendant knew of the relationship between the private entity and the federal agency. The government contends that this was a misconstruction.

In Candella, the Court noted that the United States was responsible for payment of the moving expenses involved; the interest of the federal government was made known to the defendants; the application made known the relationship between the City and the federal government; and, made known the fact that any false statement contained therein would be punishable under the United States Code. In distinguishing Lowe v. United States, 141 F. 2d 1005 (5th Cir. 1944), the Court noted that in the facts presented before it, the City served as the administrator of a federal project and went on to state that the defendants contemplated that the statement was to be utilized in a manner which was within the jurisdiction of a federal agency. In the only other cases cited by the government, the Courts held consistently with the argument

of the defendant herein. In United States ex rel. Marcus v. Hess, 317 U.S. 537, 543-544 (1942), a case not involving this statute, the Supreme Court noted that the essence of the crime charged was the defendant knowingly causing the government to pay a fraudulent claim. In United States v. Lange, 528 F.2d 1280, 1287 n. 11 (5th Cir. 1976), the Court noted that the defendant was informed of the connection between his false statement and the federal funding.

The government states that the defendant's analysis of Candella is erroneous. Rather, it argues that "it must be proven, inter alia, that the defendant was aware of the relationship between the private agency and the federal agency." Assuming there to be a distinction between what the defendant has stated must be proven and what the government concedes must be proven, the government has failed to allege even the elements which it recognize as essential.

A defendant is entitled to know that evidence in support of each of the essential elements constituting the crime with which he is charged was presented to and passed upon by the Grand Jury. From the face of the indictment, it is impossible to tell that the government presented to the Grand Jury evidence of the jurisdictiona relationship between the private entities and the LEAA (particularly with reference to counts 1 and 2 where two private entities are mentioned and no relationship at all between the LEAA and the private entity to which the defendant is alleged to have made or caused to be made a false statement is mentioned), the defendant's knowledge of that relationship, or his use of that relationship. It is submitted that the absence of allegations which the govern-

ment, itself, concedes must be proven, renders the false statement counts fatally defective.

Lastly, it should be noted, that while the indictment alleges the false statement, it does not specify what the true state of facts were. The indictment alleges that it was falsely stated that the defendant was not receiving any reimbursement from any other source for the aforesaid expenses and that no other funds were available to reimburse him for that expense. The indictment does not state which of the two clauses of that statement are false, or that both clauses are false. Further, the indictment does not state how either of the clauses is false. The indictment does not state what the true facts are alleged to be. Without such specificity the defendant's ability to prepare his defense is prejudiced.

Because of the absence of essential allegations, at least one of which is conceded to be essential by the government, the false statement counts should be dismissed.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT II

THE SUPERSEDING INDICTMENT IS BARRED BY THE DOUBLE JEOPARDY AND DUE PROCESS PROVISIONS OF THE FIFTH AMENDMENT.

The government, in its opposing memorandum apparently misconstrues the arguments of the defendant. The defendant does not argue that he cannot be retried upon the superseded indictment nor that the government is limited to using the same evidence adduced at the first trial.

The particular evil at which this Point is addressed is multiple prosecutions for violations arising out of the same allegedly criminal scheme. What is disputed is the government's ability to intentionally hold back alleged violations from one indictment in order to obtain disclosure of the defendant's case and refine its own presentation in light of events of the first trial.

As was noted by the Supreme Court in its recent decision, cited by the government, United States v Dinitz, 44 U.S.L.W. 4309, 312, 13, (March 8, 1976), the double jeopardy clause "bars retrials where 'bad faith conduct by the . . . prosecutor threatens '(h)arrassment of an accused by successive prosecutions . . . so as to afford the prosecution a more favorable opportunity to convict the defendant. [citations omitted]."

What is argued is that the government should not be allowed to proceed to trial under this superseding indictment. This conclusion is based upon three premises which the government does not discuss. First, it is suggested that the defendant has been placed in jeopardy. The current view, particularly in this Circuit, is

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LD COUNTY

that jeopardy attaches when a jury is empanneled and sworn. It is conceded that the government may retry the defendant upon the first indictment, not for the reason that the defendant has never been placed in jeopardy but on the ground that under current legal theory, a necessary mistrial allows jeopardy to continue through the retrial.

Secondly, there will come a time when the superseded indictment will be dismissed. It is submitted that dismissal of an indictment once jeopardy has attached must be with prejudice. Such dismissal constitutes an occurrence upon which the doctrine of collateral estoppel may rest. A dismissal with prejudice of the superseded indictment should lay to rest all issues which were raised or could have been raised by the superseded indictment and prevent prosecution of all crimes to which the double jeopardy and collateral estoppel constitutional guarantees extend.

Third, it is submitted that after such dismissal, the overlapping counts would be precluded because they are not identical to or carried from the superseded indictment. Rather, because of the way in which they have been reframed and recast, they are new charges arising out of the subject scheme of the first indictment. The totally new counts are, by the government's admission, part and parcel of the same single scheme. It is submitted that where a single scheme is alleged, the government cannot subject a defendant to mutiple trials based upon the distinct offenses which may have been committed during the course of that scheme.

The cases cited by the government do not controvert these premises. In United States v. Jasso, 442 F.2d 1054 (5th Cir. 1971)

the court held that where the government confessed error on the defendant's appeal of a conviction, it was analagous to a reversal and under traditional legal theory constituted a waiver of the double jeopardy guarantees as if jeopardy had never attached. More importantly, the new indictment carried forward the identical three counts of the old indictment as well as adding a conspiracy count which that court considered to be a new and different crime which could have been charged in any event in addition to the existing indictment.

In United States v. Mischlich, 310 F.Supp. 669 (D.N.J. 1970), aff'd. 445 F.2d 1194 (3rd Cir. 1970), cert. denied 404 U.S. 984, the lower court did state that a mistrial renders nugatory all trial proceedings as if no trial had occurred at all. It is submitted that such a statement applied to all circumstances, does not reflect either current legal theory or reality. A trial did occur. The defendant was required to bear the burden and expense of defending that trial. The testimony and evidence at that trial is not lost. In fact, it may well be used to impeach witnesses at subsequent trials. In fact it may have already been used in the presentation, if any, the government made to the Grand Jury to obtain this superseding indictment.

The lower court's statement in Mischlich was made in allowing the defendant to assert a venue defense which he had not raised at the prior trial. On appeal, this statement was not adopted by the court which did not accept the defendant's double jeopardy arguments concerning his re-prosecution. The Appellate Court placed heavy emphasis upon the fact that it was the defendant who

requested the mistrial for his own advantage. This distinction was the sole issue presented and was recognized by the Supreme Court in United States v. Dinitz, supra.

In essence, the defendant here argues that had a verdict upon the old indictment been reached, the government would have been precluded from prosecuting the defendant for the thirty new instances of alleged mail fraud as well as the ten instances of alleged false statements. This conclusion is predicated upon the fact that in order to prove the thirty new counts, the government will again be required to prove the existence of the criminal scheme itself, and its basic elements. Only the specific details of each new claim will be different. Moreover, it should be noted that these details were presented at the first trial as prior similar acts used to prove the scheme, itself. It is submitted that this was prohibited by the Supreme Court in Ashe v. Swenson, 397 U.S. 436, 90 S.Ct. 1189, 25 L.Ed.2d 469 (1970), in which the government, having tried the defendant on robbery, itself, with respect to one victim, was precluded from trying the defendant as to another victim.

If this would have been the result had a verdict been reached, it is submitted that this same result should obtain if the first indictment is subsequently dismissed with prejudice. The government has made no attempt to justify its actions or to explain why the charges contained in the superseding indictment were not earlier made. The absence of an explanation coupled with use of the facts upon which the new counts are based as prior similar acts at the first Trial, compels the conclusion that the government's

actions were taken to intentionally harrass the defendant and make improper use of its own failure to prove its case beyond a reasonable doubt to the twelve jurors at the first trial. It is submitted that such conduct is fundamentally unfair and represents a total abuse of the Grand Jury and this Court. On the basis of the double jeopardy or due process clauses, the defendant asks this Court to dismiss the superseding indictment.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT III

INDICTMENT #75CR645 SHOULD BE DISMISSED.

The defendant reiterates its argument that should this court choose not to dismiss the superseding indictment, the superseded indictment should be dismissed. The Court of Appeals in Strewl did state that this should ordinarily be done but noted that it is required that the defendant so move. (In Bowles, it was noted that the government, itself, obtained the dismissal of one of the two indictments pending against the defendant prior to trial.)

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT IV

THE DATE, SEPTEMBER 14, 1969, CONTAINED IN PARAGRAPH 1 OF COUNTS 11 THROUGH 46, SHOULD BE STRICKEN.

The government argues that the September 14, 1969, date is proper because although it is without the Statute of Limitations, it is proper to extend the starting date of a scheme beyond the Statute of Limitations, so long as the indictment charges an offense committed within the Statute of Limitations.

The defendant's argument in no way concerns the Statute of Limitations. What is argued is that where a date is stated to be that date on which a scheme is commenced there must be some facts alleged which demonstrate the relevancy of that date to the scheme. Here, it is not alleged that the defendant did anything in furtherance of the scheme for some two years subsequent to the date on which the sceme is alleged to have begun. Again, viewing the indictment as a whole, the date does nothing to put the allegations in any context and serves solely to prejudice the defendant.

Further, it is submitted that this motion is not premature. The government will undoubtedly attempt to use the date, whether in its opening, the introduction of evidence, or otherwise. It is submitted that any allegation of an indictment which bears no visible relevancy to any of the acts charged, if potentially prejudicial to the defendant, should be stricken. What the government is arguing is that all motions to strike prejudicial surplusage should await the trial. It is submitted that such is not the case.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT V

DEFENDANT SHOULD BE PERMITTED TO INSPECT THE GRAND JURY MINUTES.

The government argues that the defendant's motion to inspect the Grand Jury minutes should be denied as it is based upon an erroneous assumption that a new Grand Jury, hearing no live witnesses, handed up the superseding indictment. The fact that the Grand Jury which returned the original indictment returned the superseding indictment does not render this motion moot. To the contrary, the abuses to which the defendant and the Grand Jury process, itself, may have been subjected appear clearer.

One might possibly understand inconsistent indictments returned by different Grand Juries. However, where the same Grand Jury is, itself, inconsistent, cause for concern arises. While the defendant is not certain how many live witnesses were heard by the Grand Jury which returned the superseded indictment (it has been disclosed that this Grand Jury was read testimony given to an earlier Grand Jury), the government has not stated whether any live witnesses were heard by that Grand Jury prior to changing its mind and charging the defendant with 46 violations of federal law. The defendant is concerned as to what was done to refresh the Grand Jury's recollection of testimony it may have heard or have been read six months ago or more.

The presence of abuse is not improbable in recognition of the government's admitted practice of preparing the indictment in advance and submitting it to the Grand Jury with whatever preface the Assistant United States Attorney chooses.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

No explanation at all is given by the Assistant United States Attorneys for the particularly inconsistent Coun. 45. One must question the fact that the very same Grand Jury which refused to charge that the American Society for Industrial Security was defrauded has now changed its collective mind. The government has made no attempt to explain or deny its use of probable perjured testimony to secure Count 45.

Each and every one of the arguments advanced by the defendant in its prior memorandum is still relevant. The fact that the same Grand Jury returned both indictments renders the Government's conduct more suspect. In addition to highlighting Count 45, it becomes clear that the government intentionally precluded the Grand Jury from charging the defendant with all known violations in the first instance. Clearly, evidence of the additional counts was available to that Grand Jury prior to the first trial. Such evidence was used by the government at the first trial.

Because the government has not indicated that the Grand Jury heard any live witnesses after the return of the superseded indictment, and because there may have been extensive use of hearsay in obtaining that first indictment, and because of the inconsistency between the indictments returned by the same Grand Jury, and because of the probable use of perjured testimony, and because of the probable harrassment of the defendant by intentionally withholding action by the Grand Jury, the defendant reaffirms his call for the inspection of all Grand Jury minutes.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT VI

THE DEFENDANT'S RIGHT TO A SPEEDY RETRIAL OF INDICTMENT 75-CR-645

The government argues that the defendant's waiver of his speedy trial or retrial rights was knowingly and voluntarily made on the record in the presence and upon the advice of counsel. The defendant argues that his waiver was based upon an erroneous interpretation of the law by Judge Platt. If the basis on which the waiver was made was a legally erroneous conclusion by the Court, the waiver cannot be said to be knowingly, voluntarily, or fairly made. If Judge Platt was correct in concluding that where a superseding indictment is returned between the date of the declaration of a mistrial and 60 days thereafter, the defendant must proceed to trial upon the superseding indictment within the 60 day period, regardless of how much time that gives the defendant to prepare against the new charges, then the defendant is constrained to reaffirm his waiver. If the undisputed basis of the waiver is incorrect, the defendant asks to be relieved.

Additionally, with respect to the defendant's speedy trial rights and in light of the defendant's arguments in Points II and V, supra, it is contended that the defendant's speedy trial rights were violated by the government's intentional withholding of the charges against him now contained in the superseding indictment. It is submitted that once the government elects to proceed by having an indictment returned and arraigning the defendant thereon, the government should be required to proceed to trial of the

defendant on all known violations arising out of a single course of conduct within six months of the arraignment. By splitting the scheme into its various component parts, not only does the government force the defendant to undergo mutiple prosecutions for the same conduct, but, as demonstrated herein, precludes any attempt at a prompt resolution of criminal matters which the speedy trial statutes are designed to effect. There is no excuse offered by the government for the multiple prosecutions, themselves, nor for the delay in fully charging the defendant once he had been arraigned.

The defendant asks this Court to recognize all of the defendant's speed trial rights.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

POINT VII

THIS CASE SHOULD BE DESIGNATED A "WESTBURY" CASE.

The government submits affidavits from an Assistant United States Attorney, a newspaperman, and a Marshall which seem to indicate that a criminal trial should never be held in Westbury. It is ironic that the government, which was concerned with the presence of press coverage in the past, now attempts to use the accommodation of the media as a basis for opposing defendant's motion.

Second, it should be noted that the first trial of the defendant was attended by few spectators. Further, it appeared that most of the individuals in attendance were other Assistant United States Attorneys, Internal Revenue Agents, or other federal employees. It is submitted that the trial of the defendant is neither a school nor entertainment for employees of the federal government. There were, indeed, comments made by spectators at the first trial of the defendant. However, these comments were certainly not favorable to the defendant.

The Westbury annex is accessible by public transportation and traffic and parking in Nassau County compares very favorably to that in Brooklyn.

Each of the criteria of the calendar rules of this court has been met. Most importantly, however, the events of the first trial demonstrated that trial of this case in Brooklyn not only works a severe hardship upon the witnesses, both of the government and the defense, but also interferes with the orderly presentation of evidence. Some witnesses were required to travel

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to Brooklyn and miss entire days of work waiting to be called by the government. Were the trial to be held in Westbury, this problem could be greatly alleviated. Witnesses were repeatedly interrupted on the stand to accommodate others, primarily the defendant's character witnesses, who could testify only when they could spare a complete morning or afternoon. Most of these problems would be eliminated were the trial to be held in Westbury.

The full impact of holding the trial in Brooklyn was not known by the defendant prior to the first trial. Even without this concrete showing of prejudice, Judge Dooling, contrary to the statement of the Assistant United States Attorney in Point VII of the government's brief, did not deny the defendant's motion. (See pages 47 through 51, January 21, 1976 a copy of which is annexed hereto as Exhibit A.) The court left open the issue of trying the case in Westbury. (The defendant later determined not to press that issue. It should be noted that defendant's former counsel had his office in Manhattan.)

In addition to satisfying the calendar criteria, it is submitted that the defendant has demonstrated actual prejudice not only to the witnesses but to his defense in trying this case in Brooklyn. The defendant urgently asks this court to grant his motion.

DEFENDANT'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INDICTMENT AND OTHER RELIEF REQUESTED

CONCLUSION

For the reasons herein above stated, the relief requested by the defendant should be granted.

Respectfully submitted,

WILLIAM CAHN
Attorney for Defendant
Office & P. O. Address
278 Old Country Road
Mineola, New York, 11501
(Phone 516-747-7616)

Neil R. Cahn

by NEIL R. CAHN
Of Counsel

THE COURT: I want you gentlemen to sit down and talk together and maybe enter into a letter or some form of stipulation on the point so that at least everybody will know what he is to home in on. If you have got a problem where you ought to surface it before the close of the day so it is going to be necessary to get any originals, and it can be done forthwith, make sure whoever supplies them retains very very good Xerox copies for that file should a disaster take the shape of, if there is a conviction on one or more counts and the U.S. Court of Appeals gets into it under it's rules and demands that exhibits be transmitted to the court for it to look at, so we have to look a long ways down the road.

MR. KLEIN: We have one item left.

THE COURT: Yes, Sir.

MR. KLEIN: I represent a man who is an attorney --

THE COURT: Yes.

MR. KLEIN: The result is I can't make unilateral decisions. We now come to the question of these newspaper articles and probable prejudice, and how to avoid it.

I spoke to Mr. Cahn Saturday, and Mr. Cahn

wants me to make an application to have this declared a Westbury case.

As I understand all of the witnesses might very well come or be more convenient to Westbury than Brooklyn.

MR. DRUKER: I think the bulk of the witnesses, at least from the government's case will be coming from such places as Reno, Nevada, San Francisco, Los Angeles, Philadelphia, Washington D.C., Chicago and Hawaii. There will be some people from Nassau County and some from Mineola who have been on the grand jury and there is no hardship on them. I would most strenuously object to that.

But I also question this plea that in the face of Mr. Cahn's prior representation the defendant might wish a change of venue out of Brooklyn because of the publicity. And that Westbury would be the very heart of the area which he contends that there would be a prejuidice of publicity. I most strenuously object to this so-called change of venue of this witness.

THE COURT: Let me suggest this to you. The trial does not have to be entirely conducted in one place, you know.

BEST COPY AVAILABLE

MR. DRUKER: That is correct.

THE COURT: Because we had a case in which there was a witness who, for some reason or another, wouldn't come to Brooklyn. So we went out to Mineola and tried the case out there for a few days. So be it. If these incoming witnesses find that it is most inconvenient to get to this courthouse from Hawaii, to the Kennedy Airport then to here, I suppose that we can go up there to that courthouse as quickly as we could have them come to this one. And that we could then get to the witnesses to whom Westbury is more accessible, and transfer the proceedings to Westbury.

MR. KLEIN: Your Honor, number one, it seems to me the witnesses who don't live in the Eastern District, it wouldn't make any difference to them if they came to Brooklyn or to Westbury.

THE COURT: It is a little more inconvenient.

MR. DRUKER: It would make a difference to the government, and it would make a difference to the jury and possibly make a difference to the court personnel. In any event, I just wanted my objection to be noted.

MR. KLEIN: We do have a number of witnesses called, from Nassau County.

THE COURT: As I say, if the inconvenience of the witness in the case as to the grounds of witnesses not contemptible in number of importance, that a continuance of the trial at Westbury would represent a real advantage, then we will move out there. No problem.

MR. KLEIN: All right.

THE COURT: I think that is part of your right to compulsive process and presenting witnesses.

MR. KLEIN: And the other part of Mr. Druker's last remark I questioned that it is inconsistent --

THE COURT: I don't care about that. That is a judgment for the defendant to make.

MR. KLEIN: Then I will just file my motion, Your Honor.

THE COURT: Yes.

MR. KLEIN: At least for the defense case we certainly want to be out there in Nassau. We have a lot of documents that have to come in from Nassau County as well as convenience for all the witnesses.

MR. DRUKER: Your Honor, many, many of the trials that we have in this district involve witnesses coming from Suffolk and Nassau County, and no one has complained about coming to this courthouse for grand jury on that basis. But if we reach such

an issue that it were physically impossible and a doctor has certified that he was unable to come here, I certainly would consent to the motion moving to Westbury.

THE COURT: I think you will have to go further than that.

MR. DRUKER: But a general move of the trial to Westbury --

THE COURT: We have a right to conduct court there. And there is nothing in the nature of a case that requires that because it is inconvenient to some witnesses that it be tried in one case and to the other witnesses be tried in another. The court is in powered to both places where the interest of both set of witnesses should not be dealt with.

No problem.]

MR. KLEIN: Your Honor, I am not prepared to move for a change of venue. Can I hold out on that.

THE COURT: What is that?

MR. KLEIN: I don't know, all of these newspaper clippings which really are glaring and most of them came out about the time the plea bargaining took place and was rejected. Then the

ORAL ARGUMENT AND DECISION ON DEFENDANT'S MOTIONS.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
APR 20 1976
TIME A.M.
P.M.

----------x

UNITED STATES OF AMERICA, :

-against- :

WILLIAM CAHN, :

Defendant. :

----------x

75-CR-645

United States Courthouse
Brooklyn, New York

April 21, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

MOTION

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U.S. District Court

EMANUEL KARR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FEDERAL COURT HOUSE, ROOM 362
225 CADMAN PLAZA EAST
BROOKLYN, N. Y. 11201
TEL. ULSTER 2-7105-7106-7107

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES O. DRUKER, ESQ.
Assistant U.S. Attorney

NEIL R. CAHN, ESQ.
Attorney for Defendant

EK:TR
1

COURT CLERK: Criminal motions, United States of of American against William Cahn.

THE COURT: The defendant is not here yet?

MR. CAHN: Let me give you my name.

I am Neil R. Cahn. N-e-i-l.

THE COURT: This is a motion and I can hear you, my time is limited, without waiting for your father to be here.

MR. CAHN: Your Honor --

THE COURT: I did not get an address or a firm name for Mr. Bogin the other day when he was here, and he is not listed on our Clerk's roll as a member of the bar of this Court.

Can you give me some background for him?

MR. CAHN: I have his card, your Honor.

THE COURT: Give it to the Clerk and I will take a look at it.

(A card was handed to Judge Judd.)

THE COURT: Lake Success, we didn't know just where to find him.

MR. CAHN: As far as I know, your Honor, he is a well experienced attorney in this court and has tried many matters here.

THE COURT: Well, is he in some firm or some corporation, because I did not find him in the Nassau

Phone Book as a lawyer.

MR. CAHN: He has new offices, that may account for it, but he is a private practitioner.

THE COURT: Yes, all right.

The defendant is satisfied with him, I guess I should not go beyond that.

Now, I have received your reply brief and I have studied it somewhat and I think we still have a situation where the indictment on the mail fraud counts was upheld by Judge Dooling without much difference from what we have now. His opinion on the false statement counts said that the Government hadn't really argued it and would have to be considered anew.

Now, I will hear what you have to say.

MR. CAHN: First, your Honor, I would like to convey my father's apologies for not being here. I imagine you may be aware that his mother died on Friday.

THE COURT: No, I am sorry about that.

MR. CAHN: And my father --

THE COURT: Your grandmother, I am sorry for that, too.

MR. CAHN: My father is in Temple this morning.

THE COURT: Yes.

MR. CHAN: Your Honor, with all due respect, probably of my inexperience, I was quite distressed at your remarks on Friday concerning the proforma nature of this motion.

Again, in your comments indicating similarity between this indictment and the superceded indictment, it is based upon the interpretation of Judge Dooling, at least partly, and the presence of an element in the old indictment that is not here but which was picked up by Judge Dooling as the basis for upholding the criminality of the allegations that it was just an essential element of the crime.

Now the element that I am speaking about is something alleged in the indictment which indicates a prohibition, whether internally, that is within the private entities named, or in the law and the defendant's knowing action in violation of that prohibition.

Now, there are only two facts alleged --

THE COURT: I thought it was mail fraud to obtain money from the LEAA organization on false representation that he didn't expect to be reimbursed from any other source.

MR. CAHN: That is not the charge, your Honor.

MR. DRUCKER: Your Honor, with the exception of the first ten counts as they relate to the LEAA,

the mail fraud counts allege that the defendant travelled and that he received reimbursement for his travel from Nassau County, and that then without revealing to these various other organizations he submitted claims to them for the same items of travel expense.

THE COURT: The indictment goes beyond that.

MR. DRUCKER: The indictment says that he stated falsely that he was not receiving any reimbursement from any other source.

MR. CAHN: Not on the mail fraud counts.

MR. DRUCKER: Another mail fraud is just that he fraudulently concealed.

THE COURT: You mixed them around, you had the mail frauds first the last time, I see.

MR. DRUCKER: It is fraudulently concealing from them the fact that he already or was receiving concurrent reimbursement for his travel expenses.

THE COURT: Yes.

All right, go ahead, Mr. Cahn.

MR. CAHN: This is the very issue, this is the issue which I am trying to get at with respect to the mail fraud counts.

Your Honor, there is no charge that he lied to any entity, there is no charge that he submitted to

any entity a claim form or that he had an agreement that would prohibit his submitting an expense claim form.

What was charged in the old indictment and that is not charged here is that these private entities or the agreements between the defendant and the private entities contained a prohibition excluding two payments for the expenses.

That is not present here, there is no such exclusion alleged, there is no misrepresentation alleged, there is no lie alleged. The only thing that is alleged is the fact that a crime was committed for an expense that the county of Nassau was acting on a payment or had already paid.

Your Honor, I have cited in the original memorandum, I believe 7 cases dealing with insurance and another indemnity situation which says that there is nothing at all wrong with receiving two payments for the same expense if the individual parties agreed to pay the expense.

THE COURT: Yes, if he bought two insurance policies, which we don't have here, unless there are mutually exclusive provisions in them.

MR. CAHN: Correct, correct, just as if they entered into agreements with two different parties

for payment of expenses.

Now there is no such allegation and the other cases do not go into that situation.

THE COURT: I think Judge Dooling's view was that the Government had undertaken to prove more than it had to in the past indictment.

MR. CAHN: Your Honor, Judge Dooling charged that it was required to be proved that the defendant knew when he submitted the claim that he would not be permitted to obtain such second payment. That is not alleged here.

There is no criminal case that I could find, that my father could find and that any of the attorneys and advisors that we have had could find, there is no civil case that we could find, there is no statute that we could find, State or Federal, no cases cited by the Government in which receiving two payments in accordance with the contract is held to have been anything other than recoverable.

THE COURT: Well, there is the wording there, "In accordance with the contract."

The statement here is that he obtained by false pretenses by not disclosing to the Federally funded body that he was getting reimbursement from Nassau County.

MR. CAHN: First, there is no connection between the private entity, at least in the mail fraud counts as alleged, between the private entity and the Government.

Secondly, the Government has given me no argument that a duty to disclose was created.

What is submitted is that the defendant was an individual, that the private entity was another party. The law does not prohibit that kind of an agreement, the law does not create a duty to disclose any motives or gains that the defendant might have had for entering the contract.

What the Government is attempting to do is say, I don't care what the contract was between you and the private entity because we have not had any complaints from the private entity, but, well, the contract you made was illegal.

Your Honor, the only cases we could find support the legality of the contract, and it was the Government which analagize this situation to the insurance cases, and it was there that the situation came up with rendering services, etc.

I can understand Judge Dooling's interpretation if it alleged that the defendant knew and he submitted the claim and that the claim was prohibited and that a

fraud had been alleged. But that is not alleged, all that is alleged is that he submitted a claim. Now without the exclusion, the prohibition and the defendant's knowledge of the prohibition, all the case law in the United States says that is legally proper.

MR. DRUCKER: If the defendant would care to cite one or two of those cases--

THE COURT: He cited them, he cited them. I think they differ.

MR. CAHN: May I?

THE COURT: Go ahead.

MR. CAHN: If your HOnor has it, I don't know, but if there is a contract with two insurance companies --

THE COURT: Well, when you pay two premiums for two policies and there is no exclusiory clause, you can collect, but that differs when you make a representation to somebody --

MR. CAHN: There is no representation made, there is no representation alleged.

THE COURT: Well, there is a failure to disclose, which is substantially the same thing.

MR. CAHN: If there is a duty, a duty to disclose created, but what I don't understand is where there is a duty to disclose which arose, it didn't arise from the conduct or the agreements between the parties, it

does not arise in law.

We are dealing with two private parties dealing at arms' length. The defendant, when he undertook these trips, undertook them for two different purposes. One purpose was for each of the two entities, and nothing to the contrary is alleged.

THE COURT: But the allegation is that he collected his fare twice, not that he divided it between the two entities.

MR. CAHN: Your Honor, there is nothing in the law that prohibits that.

MR. DRUCKER: I think that is a jury question.

THE COURT: It depends on whether there is an implied duty to disclose.

MR. CAHN: What I am concerned about is where this duty arises.

THE COURT: Out of good faith, I suppose.

MR. CAHN: If your Honor pleases, we -- are we basing criminal penalities on a question of good faith? We are not talking about a civil matter here.

THE COURT: That is right.

MR. CAHN: We are talking about a pulling out of the air of a duty which is not created and of which there is absolutely no precident.

If the defendant had desired to send all of

his research assistants to the libraries to find out if this conduct was prohibited, he could not find out that it was prohibited, he could not find out that it was prohibited, the only cases --

THE COURT: He might have found out if he looked in the Cannons of Ethics.

MR. CAHN: The Cannons?

Which Cannon of Ethics?

THE COURT: A lawyer's duty to be honest.

MR. CAHN: Your Honor, we are not in a disbarment proceedings,

THE COURT: No, we are here on a question as to whether somebody who submitted a bill without disclosing that the bill had already been paid or is being paid by somebody else has violated or is guilty of false pretenses.

MR. CAHN: The only situation I can find that is any way analogous to this are the insurance or the indemnity cases which says that if you have an agreement by which the expense has been agreed to be paid and which does not contain an exclusion, you are allowed to be paid according to the agreement without reference to any other matter.

The defendant did not relate to these private entities as their attorney, he was a lecturer, he was

asked to come to California or wherever it was to give a speech.

MR. DRUCKER: That is not accurate, either.

THE COURT: Those maybe matters of defense, I presume.

MR. DRUCKER: Your Honor, may I just say, and I want to be sure that the Court is fully aware of the facts here, number 1, the defendant -- and then I will argue the law after Mr. Cahn is finished -- number 1, the defendant was not just a lecturer. In the case of the National District Attorneys' Association he was an officer of that Association for most of the time, and the president of it for a year. In the case of the National College --

THE COURT: You are going beyond the language of the indictment here.

MR. DRUCKER: That is correct, but this is just so the Court is aware of the facts in the case.

IN the case of the National College of District Attorneys he was a member of the Board of Regents, and that he travelled, as the evidence will show, that he travelled in conjunction with his attendance at the Board of Regents meetings --

THE COURT: Let me hear Mr. Cahn.

MR. CAHN: I would object to any going into

the facts at all because the facts in this case are that only one party paid for these expenses when looking at the picture as a whole.

What we are tremendously concerned about is that there will be nothing to pick up, no facts to adduce, if the Government holds -- if the Court holds that mere submission of a claim is a fraud.

The fraud, that fraud, has never been defined before.

The only cases where it came up have been to the contrary.

THE COURT: What about the other points?

MR. CAHN: Concerning the false statement points, Judge Dooling dismissed the counts on 3792 grounds.

I quoted the language of Judge Dooling, I made the point and the Government has not come back with any arguments as to why this ruling in that regard is not correct.

THE COURT: Well, they have cited the Kandella case.

MR. CAHN: The Kandella case has nothing to do with that portion of Judge Dooling's ruling.

THE COURT: No, Judge Dooling didn't pass on the 1001.

MR. CAHN: The indictment was dismissed on 3792 grounds.

THE COURT: Yes, but he said he had not really considered the 1001 point.

MR. CAHN: No, your Honor, the former charge was under 1001, 3792 was not charged.

THE COURT: He said whether count 7 can be saved as a count directly under section 1001 was not really argued, so that is open fresh on this indictment, it seems to me.

MR. CAHN: Judge Dooling ruled, as far as I understand the reason, that is whether it could be saved, that was dealt with by whether you could charge the defendant under 1001 using 3792 language as the underpinning; it appeared to him from the facts of this case that you could not get that underpinning from 3792.

They have not used the language of 3792 this time as they did not use it the last time, and they have not attempted to place their case within Judge Dooling's direction concerning using the language and charging a violation by use of 1001 of the language of 3729, as 3792 provides.

3792 provides that the implementing criminal statute will be 1001.

The charge is not under anything held criminal under 3792, and I believe that was Judge Dooling's concern.

The second argument involves Kardella and in dealing with what statements, what allegations are necessary, where a false statement or an alleged false statement or comment is not made to or from a Government agency.

Now I don't quite understand the distinction the Government is making in what must be proven and in what the Government says must be proven: The cases uniformly hold that where a statement is not made to a government agency, the nexus between the private entity and the government agency must be alleged, it must be proven, proven that the defendant knew it, and it must be proven that the government made the statement to the private entity in order to effect some governmental action.

THE COURT: Well, the allegations here are that a false statement was made in a manner within the jurisdiction of the Law Enforcement Assistance Administration, and maybe they won't be able to prove that, but as an indictment it is good.

MR. CAHN: The simple tracking of the language?

THE COURT: Yes.

MR. CAHN: Where the indictment reveals there is a jurisdictional problem?

THE COURT: The jurisdictional problem has to be supported by facts or proof at the trial, I think.

MR. CAHN: More than that, your Honor, I am saying that there is an additional merit allegation that must be made which is not limited to the jurisdictional question, whether the matter was in fact within the jurisdiction of a Federal Agency is not the same question as to whether the defendant knew of it and acted because of it.

They are pointing directly to the merits of the charge itself.

Each of the cases I have cited, the defendant and the Government have cited, point to that element.

THE COURT: The Government has included willfully and knowingly in its indictment.

MR. CAHN: I am not talking about willfully and knowingly in making the false statement.

There is an additional knowledge element, the knowledge of the relationship between the private entity and the Government. All the indictment charges is that he willfully or knowingly made the false statement to a private entity.

The cases impose additional essential elements.

In addition -- well, that would go, I would imagine, to the jurisdictional point, but in the first two counts there is absolutely no mention or no connection attempted between the entity to which the defendant submitted the private statement and the Government.

They talk about two different private entities, that he was paid by one and he submitted a claim to the other.

THE COURT: All right, go on.

MR. CAHN: The second point is the double jeapordy and the collateral estoppel allegation and the due process point.

THE COURT: That is pretty well covered by the briefs.

MR. CAHN: No, it isn't, I don't believe so.

I believe it is similar to Howard, Howard v. the United States, which is discussed at page 21 of the original memorandum.

THE COURT: Yes.

MR. CAHN: The Court there held that the conspiracy count was a new and different crime which could be charged in any event. The other problem of changing the mail fraud counts was not present there, they carried forward the identical three counts,

and in addition -- well, no, that is not the Jasso case. I submit that the distinction of Jasso is that, as I attempted to make in my reply memorandum, well, that it is similar to that of Howard and what we are saying here is that the Government intentionally split up the scheme in order to harass the defendant and subject him to multiple prosecutions.

Now we do make that accusation and there is no question that they did have the evidence of these alleged violations before the first trial and they introduced them at the first trial.

The Government has not addressed itself to the comment. Similarly the Government did not address itself to count 45 concerning the Government's use of perjured testimony --

THE COURT: Wait a minute.

What is this?

MR. DRUCKER: This is a new accusation here, the Governments use of perjured testimony I don't think -- well, I don't think I've heard this one yet.

MR. CAHN: It was in the original memorandum, it is in the reply memorandum.

MR. DRUCKER: What page in the original memorandum?

MR. CAHN: In the original memorandum I believe

it is point 5.

THE COURT: Point 5 is inspecting the Grand Jury minutes.

MR. DRUCKER: I may have overlooked it, I don't recall anything about perjured testimony here being alleged.

MR. CAHN: On the top of page 32.

THE COURT: On 32?

Oh, I see what you mean.

MR. DRUCKER: Just so the Court knows, the organization mentioned therein was not alleged as a victim in the last trial.

THE COURT: I don't see the American Society for Industrial Security mentioned in this indictment.

MR. CAHN: Count 45, I believe.

MR. DRUCKER: Count 45, but again we are talking about a matter of proof, your Honor.

This is premature, if the defense can impeach their witness' credibility then maybe the counts will be subject to dismissal. The question now is whether it is properly alleged.

MR. CAHN: I have been informed that Mr. Drucker was told by the director of that Society that he did not care how much the defendant got paid and it was for that reason that he was not charged with defrauding that organization.

MR. DRUKER: Mr. O'Connors was here at the last trial and this issue came up and Judge Dooling dealt with the witness' testimony and the count was not dismissed and therefore this is premature.

MR. CAHN: The count did not involve fraud on that Society and for that very reason -- unless you are informing this Court that that statement was never made to you.

MR. DRUKER: Again, I am not going to address --

THE COURT: Wait a minute, I am not going to have you chatter with each other.

MR. CAHN: I apologize, your Honor.

THE COURT: I am not going to listen to you two.

MR. CAHN: Insofar as the second issue of major importance, the estoppel and harassment cases, it is an intricate and complicated point based upon largely legal theory and which I cannot see has come up before exactly as it has come up now.

The Jasso and Howard cases appear on their face very similar, and I suggest that this issue requires the kind of analogous treatment that was made in Howard, looking at the new counts that were added and looking at the charges that were made.

To conclude on that point I submit that on looking at those counts and what was done by the

Government in this case, if not clearly violative of double jeopardy and collateral estoppel provisions, were at least intentional acts of the Government and without explanation which has been given and what the Courts have been given I think is just harassment and violates the defendants' due process rights.

THE COURT: What about the Westbury point?

I am not going to pick a jury in Westbury, it is impossible there.

MR. CAHN: Your Honor, I came in prepared to discuss it with my father and we came in absolutely prepared to and recognize the difficulties that come about and are involved in selecting a jury in Westbury, and we know what it is that is involved in the selection of a jury, and I must say that the inconvenience to the defendant is nothing to mention for the day or possibly two that could be involved, but what we do argue is that once the trial begins we would like the trial to be held in Westbury. We have attempted to demonstrate actual prejudice.

THE COURT: More prejudice on the defense's case than on the Government's case?

My notion would be to see how crowded the courtroom will be on the first couple of days and then to make an estimate as to what will happen if it were

in Westbury and nearer the scene.

MR. CAHN: We had 13 days' trial here and we can make an approximation of how many witnesses were here --

THE COURT: No, how many people were there in the audience?

MR. CAHN: You mean spectators?

THE COURT: Yes.

MR. CAHN: As far as I was concerned, I was only there two or three days. The courtroom was certainly not full and many of the people in the courtroom were Assistant United States Attorneys and other Government personnel.

The spectator problem, as far as I know, didn't exist there.

Now, I don't know how many people would like to attend this trial if it came to Westbury. The reason we are asking for it has nothing to do with spectators, it is due primarily to the continual interruption of witnesses and to accommodate other witnesses, and that was due to a situation where witnesses were required to come in here because they couldn't be on call from where they worked and thereby they were missing entire days of work.

That did in fact happen and it interrupted the

orderly presentation of the evidence and the continuity of the testimony.

Your Honor, I think this case is designed for trial in Westbury.

THE COURT: All right, I will have that in mind.

Mr. Druker, what do you have to say about the necessity of alleging more specific knowledge that these payments were LEAA funded organizations?

MR. DRUKER: We are talking now about the 1,001 counts rather than the mail fraud?

THE COURT: Yes.

MR. DRUKER: I don't think it is necessary to allege it, your Honor, I don't think --

THE COURT: The Kandella case suggests it may be necessary to prove it.

MR. DRUKER: The proof will be that those counts which were included as 1,001, I believe it is in those counts, the proof will be that the defendant had knowledge that the organizations were funded by the LEAA.

MR. CAHN: In that regard, your Honor, I believe the cases as originally cited by the defendant say that if it must be proven, it must be pleaded. If it is an element, it is an element which must be assured

and was presented to the Grand Jury and must be in the indictment.

In that regard, if the Government admits it has not pleaded an element and that it must be proved, then I think it should be dismissed.

MR. DRUKER: We don't admit that, we contend that it does not need to be alleged.

MR. CAHN: But it is an element which needs to be proven -- I am sorry.

MR. DRUKER: Your Honor, I will ask counsel to address himself to the Court.

MR. CAHN: I apologize.

THE COURT: I guess you have covered the points on 45.

Have you any objection to a part of the trial being conducted in Westbury?

MR. DRUKER: Your Honor, in that regard I think this was the gist of Judge Dooling's ruling that essentially if a particular need arose on a given day to have the trial in Westbury, that he would then consider that and probably grant it.

What I would ask the Court to do is this --

THE COURT: I think certainly that the Government's case, without any hardship to the defendant, can take place and should take place in this district.

You had half a dozen witnesses from Nassau in the old trial --

MR. DRUKER: We had some witnesses from Nassau, we had witnesses from Texas, California.

I think that where the necessity might arise to have the trial in Westbury would be where the defense has character witnesses, a great many of whom might be judges or public officials in Nassau County, and if that came up, I would have no objection to perhaps sitting for a day or two days, or however long that took, in Westbury.

Other than that, I think that it would be convenient, number one, to the Government and, number two, to the jurors and the Marshals and all of the court personnel, and that would greatly outweigh what the defendant might suffer in having to come in from Nassau County to Brooklyn, each day and to listen to the Government's presentation.

THE COURT: Then it is the defense witnesses that are involved?

MR. CAHN: Also the Government's witnesses, your Honor, who are involved.

MR. DRUKER: None of them complained to us, your Honor.

If the Government's witnesses complained about

it, then maybe that would be a different issue, but I think that that didn't arise as a problem in the last trial, so it is strictly conjectural on the defense's part.

MR. CAHN: The specific argument was made by Mr. Druker, and I have annexed it to my memorandum, it begins at the bottom of page 50 of the minutes and it is rejected at the top of 51 by the Court's waiting for witnesses to come in and to explain, and as it relates to that I believe the Court said that Mr. Druker would have to go a little further than that.

Now, I think the orderly presentation of the evidence and the fact that on the whole no witness would be inconvenienced by going to Nassau, that fact, and the witnesses I am speaking about, a number of those are employed in Nassau, they were subject to the Government subpoenas, they may continue to do their work there, they are available on call there, but if they are required to come here they must give up entire days of work.

Now I don't see the problem and I can see trouble here if you start the trial here and witnesses then have to come back --

THE COURT: There is one other problem which I observed, I am referring to the privacy of the jury

room, the question of overhearing deliberation, or their overhearing other people, and that is something that troubles us about those quarters.

MR. CAHN: I am not aware of that problem.

MR. DRUKER: Your Honor --

MR. CAHN: I point out that it has been mentioned to us that the Nassau County State Supreme Court facilities could be made available, which would alleviate every one of the structural problem, and the administrative judge, Judge well, it has been I believe mentioned that those quarters could be made available.

Now, I don't know, I don't know where the jury room is located in Westbury.

THE COURT: I have sat there on occasion.

MR. DRUKER: Your Honor, just in that regard, one additional argument:

The Government, as a part of their case, the Government has gathered literally thousands of documents which occupy shelf after shelf in our office here, and if during the presentation of our case we had to keep moving these things out to Westbury, that would be a hardship in and of itself.

Mr. Cahn had spoken of disruptions during the trial, no such disruption occurred during the

Government's presentation of its case. What happened was that in the defense case because of travel or hardship the defendant asked to interrupt witnesses with character witnesses and the Government consented in each and every case.

THE COURT: We generally do tnat for local witnesses here.

MR. DRUKER: There was no problem.

MR. CAHN: I didn't say that the trial was disrupted on the Government's case, what I'm saying is that there were witnesses seated outside for days and not being called. That did happen and that problem would be eliminated.

I am sorry, I lost my train of thought.

(Continued on next page.)

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THE COURT: Well, that relates to the Westbury matter.

MR. CAHN: Your Honor, on the mail fraud counts and the importance of this motion, whether the Court chooses to dismiss the counts or not, it will serve to identify and -- the issues which will relate to the trial.

Judge Dooling charged the jury that knowledge was an essential element. It is. Knowledge of the prohibition was an essential element to the crime.

In his order concerning the motion to dismiss the prior indictment which pleaded the knowledge, and this one does not, it was based upon that knowledge, based upon the conduct between the parties that an implicit misrepresentation arose. I believe that the Judge viewed the fraud as being one of implicit misrepresentation, that the very submission of a claim misrepresented the alleged fact that he was paid elsewhere. This misrepresentation was implied because the agreement between the parties or the conduct between the parties established the fact that if he did submit a claim, it meant that no other claim was being submitted. This was not taken from either the law -- because there is no law on this. And the only case law being that it's proper or enforcible, it came out

out of the agreement or the conduct or the relations between the parties.

The Government has not alleged this time around that there is such conduct between the parties. There is not. There is -- there is not such a mutual understanding between the parties that this implicit misrepresentation on which Judge Dooling based his decision could arise.

MR. DRUKER: Your Honor, may I respond to a couple of these points just briefly?

THE COURT: Very briefly, yes.

MR. DRUKER: Just one. With regard to the mail fraud issue, just so that the Court is aware of this, which has been overlooked by defense counsel, with regard to the National District Attorneys Association, which is the subject of Counts 11 through 27, there was an explicit bylaw which was introduced into evidence at the last trial and which will be offered into evidence at this trial which stated that no expense shall be paid for any officer or director where his local jurisdiction either pays them or is willing to pay such expenses.

MR. CAHN: Mr. Druker --

MR. DRUKER: I have listened to Mr. Cahn for 40 minutes and I am asking only for five minutes or less

for a brief response, if I may.

THE COURT: Yes.

MR. DRUKER: With regard to the National College of District Attorneys, the evidence was that they had a similar policy, which I believe was oral. But I just didn't want the Court to be misled into thinking there was nothing that --

THE COURT: All right. Anything else you want to say?

MR. DRUKER: Just on the double jeopardy. By the way, some of the claims that the defendant submits and sign had on them specific statements which stated, for example, I hereby certify that I am not receiving compensation from any other source.

On the double jeopardy, I just wanted to clear the record. The defendant alleges splitting of the counts and harrassment that in that regard the Government had 53 or 55 instances of what we have termed double billing. Two entities being billed for the same expense.

The defendant testified in the Grand Jury that in 46 of these instances he paid these monies to an informant by the name of Sam Houston, whose identify he did not know and whom he's not been able to locate. Rather than litigate this Sam Houston issue, and whether or not he exists, the Government chose to take those

seven counts or instances in which the defendant had not accounted for the monies generated by the double billing, and we put those in the first indictment. The defendant then claimed at trial and he said, "Oh, I made a mistake in my accounting. Some of the others didn't go to Sam Houston. The seven that the Government charges did go to Sam Houston."

And we wound up splitting four of the -- litigating the Sam Houston issue. And the Government decided, since the Sam Houston thing came out, we might as well have the 55 or however many are in the Statute of Limitations and let the chips fall where they may. And that's the reason for the additional counts in the second indictment.

THE COURT: All right. Anything more?

MR. DRUKER: Just one final thing. The subject came up at the last trial, but it was too late apparently to do anything about it, that the Government would move for sequestration of the jury. And I just want to let the Court know in advance that that will be our request when the jury is chosen.

THE COURT: Well, I will deal with that at the time. I am not -- they were not sequestered?

MR. DRUKER: One juror was lost through telephone threats and the Government would like to

avoid a reoccurrence of this.

THE COURT: I hesitate to do it. I want written papers on that.

MR. CAHN: If I may just for one minute --

THE COURT: Yes.

MR. CAHN: We are not -- it is not our argument that an indictment cannot be made that they -- they could not mention the bylaws or internal policy or whatever. I am not -- I am not stating that the Government could not fashion a legally sufficient indictment that they could not cure the defects that we considered they made here. But what we are saying is that the evidence will show there is a prohibition. If they must show the prohibition, we submit they must allege it.

And the last thing is just a reference to the statement made by Mr. Druker concerning my father's statement that he used the money on 46 of the trips. I believe and I -- this will come out later at trial -- all monies where there was double billing, with the exception I believe of one or two where it was returned directly to the county, went to Sam Houston.

THE COURT: All right.

MR. DRUKER: Fine.

THE COURT: Let me give my views on this. I

think we ought to be ready so we can go ahead when the Christenfeld trial is over. There are six or seven matters here. THe first is the mail fraud counts.

This charges a scheme to obtain money by false pretenses or other purposes by not disclosing that identical requests had been made to the county and knowingly caused the issue of mail.

Now, I suppose there is a requirement implicit in the indictment when there is a charge that part of the scheme was not to disclose, to show that it was a material non-disclosure. And I don't think it need be more specifically stated than it is.

The bylaws that Mr. Druker suggested may be part of the evidence of materiality. But Section 1341 refers to false pretenses to obtain money. And I think a failure to disclose material facts may be a false pretense within that statute.

The matter we dealt in on pages 2 to 10 of Judge Dooling in the memorandum in the last case -- and I really don't find that the difference between that indictment and this indictment on the mail fraud counts are similar, or that the insurance policy cases are similar because they are -- both parties may be on notice that there is duplicated payments. And here it is charged that there was a failure to disclose, which

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is the -- includes allegations, whether it's as neatly drawn as it might be, that there was a duty to disclose. So I'm going to sustain the mail fraud counts.

With respect to 1001, Judge Dooling on page 13 of his opinion of January 9, 1976 -- I guess it was -- said, After discussing the provisions of the Omnibus Crime Control and Safe Streets Act, which includes 3792, that whether Count 7 can be said as a count directly under 1001, was not really argued. The Government's brief simply assumed that it was enough that the National Center for Prosecution Management was an LEA funded organization. But an entity hardly becomes an agency or department of the United States because it is funded under a section LEA program. And in the light of the only authority so far, it must be concluded that the count is not sufficient under section 1001 standing alone.

The Candela case involved an affidavit which was submitted. This is 484 Fed. 2nd. And it was submitted to the City in order to get reimbursement from HUD. And that case did not say, as I think the defendant has argued here, that the agency must be controlled or supervised by a Federal agency, but just that the matter which is submitted must be submitted in a matter which is within the jurisdiction of such

department or agency.

And I think there is sufficient indication here that the -- well, there is an allegation that the statements were in a matter within the jurisdiction of the Law Enforcement Assistance Administration, and that the NDA was funded by LEA. Under the Candela case, and I think also the Urban case in the Third Circuit, 457 Fed. 2nd 805, that that is sufficient. And I don't think I am inconsistent with Judge Dooling's opinion which didn't really pass on this point in sustaining the false statements counts.

As to double jeopardy, I appreciate the argument Mr. Cahn made. It's the whole -- I can tell it's a serious argument from the amount of briefs that I have had on both sides. And I have given them serious consideration. But the -- but the mistrial, after the first trial, means that a new trial does not involve double jeopardy. And I don't think it matters that the next trial is under a superceding indictment or under the original indictment.

The old case in 183 Fed Sup.that the defendant cites in his brief simply says that the Government can't go to trial on both indictments. And I think it's logical in this case to go to trial on the second indictment.

As Mr. Cahn indicated, the Howard case is somewhat persuasive on the Government's side. And I don't agree with the distinction he's made.

The Ashe case --was a different one because there, there was an acquittal of robbery as to one person present in the same transaction, and that was held to prevent the second trial on the rest of it. But that's a different case from one where the jeopardy has been interrupted.

And I think the Jasso case, while Mr. Cahn has tried quite valiantly to distinguish it -- and it was a.Fifth Circuit case, nevertheless is quite clear that a second indictment which overlaps the first indictment, but includes additional matter does not involve double jeopardy. Therefore, I deny the motion with respect to double jeopardy.

And as to the dismissal of the first indictment, I think the reply brief points out what the defendant wants here. Because he says if I dismiss the first indictment, it has to be dismissed with prejudice, and the second indictment thereby falls. And I'm not going to put the Government in that kind of a predicament.

Of course, if there is a verdict on the second indictment, it will probably constitute double jeopardy with respect to the first indictment. So with respect

to that motion, I deny it without prejudice to renewal at a later stage.

As to the September 14, 1969 trial date -- the September 14, 1969 date in the indictment, I think it is common practice to go back into prior history where there is a charge of a scheme or a conspiracy. The Government does run a risk if it mentions in its opening something that comes before the period of the indictment and that they can't prove. But I don't think it's proper to strike that out at the present time. I think with -- the same date was in the last indictment.

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MR. CAHN: No, your Honor.

MR. DRUKER: I am not certain.

THE COURT: Well, anyway, I think it's more a question that goes to evidence rather than to any confusion in the indictment. And I am going to deny that.

With respect to the Grand Jury minutes, I am taking Mr. Druker's statement that it is the same Grand Jury which heard all the testimony before, including -- according to what he said,the testimony about all 45 or more -- all the counts in the indictment.

MR. DRUKER: That's correct.

THE COURT: And therefore --

MR. CAHN: I don't believe it was stated they heard it live.

MR. DRUKER: All right. I will make that representation now. It was the special January 1975 Grand Jury which rendered the previous and the superceding indictment. They heard all of the relevant witnesses live. They saw and examined all of the documents which formed the basis of the superceding indictment. And, indeed, they even caught -- while examining the documents under the superceding indictment, they caught several typographical errors, some of which they corrected and --

THE COURT: All right. Of course, testimony before a Grand Jury does not have to be all live. If there were a case where a second Grand Jury had acted on evidence which was simply submitted to another Grand Jury, I would proceed differently. But on the present circumstances, I deny the motion to inspect the Grand Jury minutes.

With respect to a speedy trial of the first indictment, I think first there has been a waiver. And while it's argued that it was invalid, I don't think an error of law in that connection is fatal. In any event, as I read Section 3161 in the Speedy Trial Act, 3161 (e) includes the same exclusions of 3161(h), whether it's a first trial or a retrial after a mistrial. And (h)(1)(b)(1)(c), I think it is, says:

Among the exclusions are delays resulting from trial with respect to other charges against the defendant.

And if we have a 45 count or more indictment as compared with the seven count indictment, I think judicial economy would justify trying the all encompassing one first. And so I think there is an exclusion under Section 3161, and, therefore, I deny the motion for a speedy retrial of the first indictment without prejudice to renewal if anything interferes with the

trial of the superceding indictment.

As for the Westbury matter, Judge Dooling dealt with that. And I am inclined to follow the same principle that he did, to begin the trial here, without prejudice to considering moving the entire trial out there at a later date. And I will try to find something more about the courthouses there. I think it's probably better not to move the case back and forth from Brooklyn to Westbury and back again. But I will consider that further at the trial.

Judge Dooling in his memorandum of January 21, 1976 said substantially that.

I put this together on the record so it will be the equivalent of an opinion and avoid the delay which would be involved in my proceeding back to reserve decision and go back to chambers and write something.

Now, this is the trial date, I have it down for May 3rd. My indications are that it will be either sometime in that week or May 10th that I will be available to try this. I can't really tell at the present time. I would suggest that counsel talk with my chambers next week. Mr. Schwartz will probably know what predictions I can give.

I may want to spend a half a day at Willowbrook [illegible] between the two trials. I will see whether I can

arrange that.

MR. DRUKER: Thank you for your time, your Honor.

MR. CAHN: Thank you.

THE COURT: I am sorry for the family problems, Mr. Cahn.

MR. CAHN: Thank you.

THE COURT: But you can say you argued it nobly.

* * * *

MINUTES OF PRE-TRIAL CONFERENCE.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.
JUN 4 1976
TIME A.M.

----------x

UNITED STATES OF AMERICA :

Plaintiff :

-against- :

WILLIAM CAHN, :

Defendant. :

----------x

75-CR-645

United States Courthouse
225 Cadman Plaza East
Brooklyn, New York, 11201

April 30, 1976

B E F O R E :

HONORABLE ORRIN G. JUDD,

USDJ

(Taken in Chambers)

GERALD BEATTIE
Official Court Reporter

I hereby certify that the foregoing is
a true and accurate transcript of my
stenographic notes in the above proceedings.

Official Court Reporter
U. S. District Court

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney for
the Eastern District of New York
225 Cadman Plaza East, Brooklyn,
New York, 11201

BY: JAMES O. DRUKER, ESQ.
Assistant U.S. Attorney

Also Present:

NEIL CAHN

DEFENDANT NOT PRESENT

THE COURT: I suggested that while you are here, Mr. Cahn, as I heard you were coming to pick up a copy of the government's trial brief submitted to me last night, that we might talk about a few things to get straight right away for picking a jury promptly on Monday morning, because Judge Neaher and I both have cases that will require some selecting, and a large panel, asking to get ahead of any judge picking on Monday.

If I were to segregate the jury, that would be a problem that I would have to take up right then and there and I don't know whether you have had time to consider the government's request.

The government talks about some items in Newsday last week. I think it was about a new problem of your father's severance from pay. I don't know what those have to do with sequestration of a jury.

MR. DRUKER: The point is this, what I understand -- what Newsday is an allegation basically, but the only point we sought to make by this is, Mr. Cahn is always, continually, in the newspapers because of his prominence or former prominence, and that this was a totally inadvertent thing as I understand. The way I got it was, one of the witnesses in this so called

probe leaked it out to Newsday and the thing is almost entirely inaccurate, including the subjects of the investigation, but in any event, that is what happens with people in public life.

Now, I just think there are too much -- there's too great a risk, forgetting about a problem of reoccurrence of threats to jurors that took place in the last trial. There's too great a risk.

THE COURT: What is that about a threat?

MR. DRUKER: Midway through the trial one of the jurors reported to the judge that he had received a telephone call the night before where -- if he returned a guilty verdict he would be run over by a dump truck. I believe he was a Nassau Sanitation worker and that his legs would be broken if he participated in the guilty verdict. He reported to the Court. He had not advised at that time the jurors, and he was dismissed from the panel.

Now, this juror had an unlisted telephone number by the way, and I am not going to engage in any finger-pointing. Both the government agents that have access to an unlisted telephone, and Nassau County Police, whom the defendant is familiar with, could gain access to an unlisted telephone. The point is, which ever

side is responsible, if it was either one or the other, we run the risk, a great risk, of reoccurrence, and I don't want to go through a third trial in this, nor in the interest o. justice.

THE COURT: If I were to sequester, then I would sit from 9:30 to 5:30, but I didn't have the jury. He sequestered in the Christenfeld case. I think the newspapers -- didn't check the newspapers. I think they are relatively sensible about anything this important, and it wound up with a guilty verdict even though I left the jurors out overnight.

MR. DRUKER: Your Honor, I think this is a different situation, and one thing, I represent the government's direct case, which is only going to be two and a half days. This shouldn't be a protracted trial, but at any rate there are certain things that I think either party in the litigation should not be interested in telling the jury here that there was a hung jury in the previous trial. This is the type of thing that would almost of necessity appear in newspaper articles, giving the background of the case.

Furthermore, without going into any details, the United States has been investigating the matter of threats to previous trial jurors and without going

into any details, I would -- I am willing at this point to represent that based upon what we have learned, we are not going to get through a second trial without a recurrence of this incident.

The danger that we fear most is that a juror will be threatened, also told this time if he or she reports this to the Court, he or she will be killed and we will never know -- we will go through a trial with a juror afraid to vote one way or the other, and also, afraid to report it.

THE COURT: Maybe it is just as well we had this now so Mr. Cahn can consider it; see anything else he wants to say on Monday morning. I am reluctant to sequester a jury.

MR. CAHN: My father and I have discussed the matter very briefly. We were prepared -- the thought first was that we would discuss it in the court Monday morning. I know that my father objects to sequestration.

Just for the record here, if anything that Mr. Druker has said is an accusation --

MR. DRUKER: I have tried to prevent it.

MR. CAHN: I realize the tone of your voice and the words you have said, and for that matter both

the source of the leak as to this particular Newsday article that Your Honor referred to, the source of the phone call to the juror, we have different rumors, and all it is is rumors. I think there was reported by the juror one isolated threat. The juror had an unlisted phone number. There was no recurrence with any witnesses who did have listed phone numbers, and we believe that sequestration is unnecessary and could be in fact prejudicial to the defendant.

MR. DRUKER: Your Honor, I might add --

THE COURT: There has been some defendants acquitted where juries were sequestered. They tend to blame it on the government.

MR. DRUKER: That is not a consideration in our moving this way, and furthermore, I really -- I shouldn't say it doesn't matter. It would matter if it did prejudice one party of the other. I really don't know, nor have I considered how much weight it would cut.

After this threat took place, Judge -- Judge Dooling who is equally hesitant to sequester a jury, did so on two separate occasions. On one occasion we took jurors one by one into the judge's chambers, questioned them. Judge Dooling was going to sequester, but

for one woman who had a diabetic husband. She had to be home; give him insulin, and another juror who had an epileptic child and again had to be at home. Later in the trial Judge Dooling attempted to persuade these jurors to be sequestered for at least a short time, and we couldn't do it, but I believe now we have a chance to start out fresh. We should take advantage of this opportunity.

THE COURT: If you have anything more to say, suppose we start at a quarter of ten on Monday.

MR. CAHN: I would ask that any final decision be left until --

THE COURT: I am not making any final decision.

MR. CAHN: One consideration. I would like to bring up, or keep in the background the fact that it is extremely important to us to try this case in Westbury. The government now says that its case is two and a half days. Therefore, the vast majority of the case apparently will be the defendant's and there are, I know -- I believe some Nassau County prosecution witnesses, but I believe 99 percent of the defense are Nassau County people. I would like to eliminate some of the problems that came up at the first trial.

THE COURT: Factual witnesses as well as char-

acter witnesses?

MR. CAHN: Both.

THE COURT: We got eight character witnesses out in the first 30 minutes in the Christenfeld case.

MR. CAHN: The problem we had last time was in fact, we were several times with witnesses that were passed for other witnesses. At several times -- I won't say several. I know witnesses were required to stay here for days when they were not called.

I think that is a hardship on the witnesses, tremendous hardship on the defendant by trying it here.

THE COURT: My original idea was to take the government's case and reserve decision on whether to hear the defense case in Westbury.

Didn't I say something like that?

MR. DRUKER: I believe your Honor said that, in essence, that we were going to more or less follow what Judge Dooling's ruling had been, which was precisely that that left out the question as to whether the defense case or any part of the case was necessary any time to be moved to Westbury on a temporary basis.

THE COURT: The government has something here that might affect their opening. They argue that the evidence on the Sam Huston Fund shouldn't be received,

and that would affect the defendant's opening.

MR. DRUKER: It could affect the government's opening, and I am certain it would affect the government's proof.

THE COURT: I am not clear in my mind on that.

Your claim is that the LEEA was deceived?

MR. DRUKER: Count one through ten.

THE COURT: Doesn't matter what Mr. Cahn intended to do with the money he got from Nassau County.

MR. DRUKER: That is correct.

MR. CAHN: Counts one through ten is not really deceiving LEEA. It is a lesser charge. It is a false statement made within the jurisdiction of the LEEA. Counts eleven through forty six are that the private entity and not the county was defrauded by having to pay a claim which had already been paid. Those are the essence of the two types of charges.

THE COURT: The government has tried to reduce their burden by recommending a superseding indictment, amended superseding indictment.

You want to use the Sam Huston Funds?

MR. CAHN: I haven't had a chance to review the brief --

THE COURT: You've had an hour or so.

MR. CAHN: Payments to the Sam Huston Fund is demonstrated for the purposes of good faith.

The government has taken the position of choosing to look at the scheme the way it chooses, that there were two payments for the same expenses and it has drawn the line where it chooses to draw the lines. The defense is that they have incorrectly drawn the lines, that if there is a plan or scheme it includes Sam Huston. Sam Huston is an integral part of the scheme, that the payments from the county was made or claimed for the purpose of obtaining a fund for the payment of county expenses.

THE COURT: The false statement, you may not be able to excuse on that basis. The other counts is a scheme to defraud, is not a claim for reimbursement. All of which were paid for by Nassau County.

It is quite possible, Mr. Druker, that what you are saying here, that this was a scheme to defraud LEEA --

MR. CAHN: It is not the LEEA.

THE COURT: NDDA and so forth. The LEEA organization. If what the county was paying Mr. Cahn was not intended by Mr. Cahn, -- if it was not intended by the county as travel expenses, but as a cover for

informer expenses, maybe he wasn't trying to defraud the NDAA.

MR. DRUKER: This has been Mr. Cahn's position in the grand jury and the trial that the county was paying his expenses, and that he was using money from -- from outside entities to pay informants. His intent, last time, when checks come in from NDDA, would come in and this was borne by documents. He would have them cash that money.

Now, the Sam Huston Fund, the county money, were used to pay the county expenses. Perhaps surrendered to the county in what seems to be the argument by Mr. Cahn, was going to change his position and state now that the outside entities were paying his travel and the county was paying the informant fees, not knowing it was paying informant's fees.

MR. CAHN: If you think -- that is a marked difference. I believe cross examination on your part, or my father could clear that up.

I don't think there is a dispute as to which dollar bills eventually entered into the hands of the informant. It is the dollar bills, I believe, of the private entity. However, it is the total picture that must be used.

THE COURT: I am inclined to think that is so. Give me any papers you have. I will hear you further on that Monday morning.

The government also has something we don't have to discuss today, about cross examination of your father, and it has other similar acts.

MR. CAHN: Your Honor, in that regard, Judge Dooling -- these matters were brought up substantially prior to trial, at the first trial, and Judge Dooling held that the acts you are discussing now were not similar and could not be used.

We are prepared, if necessary, to go into a full scale defense of these particular similar acts. However, they do require bringing in the witnesses from Puerto Rico and tremendous period of time to defense, similar acts. If either the similar acts -- there is a second objection. I would have to use the similar acts in that I don't believe their use is relevant to any act which will be in issue.

In any event, I believe it might be necessary to have a full hearing on these acts.

THE COURT: We will hold that up. We don't need that at this time. What about a voir dire?

MR. CAHN: I discussed this briefly with my

father. I am not prepared to give you proposed questions now. We will have them for you on Monday morning. We strongly urge the Court to question the prospective jurors one at a time, not in the presence of any juror for the principal reason of the publicity concerning the last trial and more specifically the fact that it has been reported that the jury came back eleven to one for conviction. There is a marked difference between the charges at this trial and last trial. The chance of possible prejudice is great, and if the jurors are questioned in this area their answers could corrupt the minds of other prospective jurors.

I think this area -- I think the defendant is entitled to go deeply into this question, determine if they had heard of the mistrial; if they heard of the vote, or where --

THE COURT: You want to tell them about it?

MR. CAHN: No, Judge.

THE COURT: You ask whether they heard of a mistrial?

MR. CAHN: If they heard any other trials of the defendant. The phrasing of the question is one thing we can work on over the weekend.

THE COURT: I am not going to ask if they heard

of any trial. I will ask them if they heard about the case before.

MR. CAHN: Fine. The question is, if they have an answer, hearing about the case may, or may not be grounds to remove the juror or dismiss the juror for cause.

However, if they have heard about the case, -- one of the things they could have heard is the first jury came in eleven to one for conviction. Now, if the juror knows this, I don't believe I would want him sitting on my jury, but the only way we can really get to this is by individual questioning, and I don't want his answer or the questions that may be necessitated by his prior answer to affect the other jurors.

THE COURT: All that means, I should have some individual questioning of the jurors who have heard about the case before.

MR. CAHN: I am not saying we must interview every juror from the beginning.

THE COURT: I will consider that. I have not been through the file.

Now, as to the question put by Judge Dooling, do you have any special voir dire?

MR. DRUKER: Judge Dooling used the standard

voir dire in the court. I don't think any special --

THE COURT: I don't cross examine jurors on issues of law. So don't put any of that business in any voir dire.

MR. CAHN: No, no. It is related to, number one, questions about the prior trial, publicity, and questions about -- other than normal questions. Questions probably about their perception or feelings about perhaps politicians or district attorneys, or possibly in this case because of the events of the last trial, gambling, and I can't remember any more specific areas we are objecting about off the top of my head.

THE COURT: All right.

MR. DRUKER: One question which I think is important, if not for opening, at least in eye witness selection, if your Honor is going to allow the Sam Huston for defendants for count 11 -- count 11 through 46, I have in the papers requested that the defense put this on as defense, but that this not be brought out through government witnesses. The government wishes to keep --

THE COURT: You can't stop the --

MR. DRUKER: My request is this, in essence, I think the Court does have the discretion to limit a

defense to the defense case, but in this particular case the reason I am questioning ahead of time, for example, if I -- the government is simply going to show what is in the indictment on its direct case. We are not going to go into motivation or motive. We are going to show that Mr. Cahn billed the county and billed these outside organizations for the same expenses and deliberately concealed from each the fact that he was doing so.

If I put on witnesses to this fact, seek to introduce documents or to authenticate documents, I submit that if the --

THE COURT: If they are just authenticating documents, that may be defense's case. If you are talking about representation, that is something else. I don't think I can pass on this point at this point.

MR. DRUKER: If it is not related to -- if the Sam Huston does not relate to anything that the government is bringing out, if we are using a witness to authenticate documents, testifying about a matter unrelated to Sam Huston, I hope the defense will not be permitted to bring the Sam Huston in through process.

THE COURT: No guarantee from me until I hear the witness, and decide what --

MR. DRUKER: Would the Court entertain the offer of proof when I come down to those situations where I think there might be a witness that the defense would use to -- if I made offer of proof as to what the witness's testimony would be, would the Court at that time possibly be able to rule?

THE COURT: That I don't have to decide at this moment.

MR. CAHN: Your Honor, I would imagine, just as a necessity, Mr. Spanada (phonetic) would be necessary to authenticate some of the papers. Maybe that was the particular witness he had in mind.

MR. Spanada is not only a witness as to one of the charges in the indictment, he is a witness to Sam Huston.

The question is whether maybe it might be technically proper to go into on cross examination on Sam Huston based on the question asked on direct examination, or whether we would be technically required to make him our own witness for the sake of convenience, and keep him on the stand for that purpose. That is one of the issues that will come up.

As you know, I just spoke to my father. He is strenuously objecting to sequestration of the jury,

and would ask the Court on the issue of the other acts, whether by use as prior similar acts, or as subjects of rebuttal or cross examination as to character -- this was a -- these particular acts were major subjects of the first trial. The entire case was presented to avoid having to go into these acts.

Judge Dooling felt they are not similar, and Judge Dooling believed that if the character witness solely testified as to the truthfulness as opposed to general honesty of the defendant, that these particular acts would not be proper subjects for cross examination. If there is to be any change, if these acts are to become admissible at all, we would like to have advance notice, as much as possible, a chance for a hearing out of the presence of the jury, and perhaps we may need a continuation to secure witnesses, to prepare witnesses as to the similar acts.

THE COURT: I will wait until your father is here before we rule on it.

Have exhibits been marked, and will we use the same numbers, or what do you do with the exhibits?

MR. DRUKER: Your Honor, to simplify things I have it matched in the file. I will give it to Mr. Cahn. The government, with regard to each count, the

government will generally introduce these groups of documents. For example, on count seven --

THE COURT: I don't want the details now. How are we going to mark them?

MR. DRUKER: What we have done, tentatively on count seven we marked Mr. Cahn's counter claim as 7 for identification. We could mark his claim to the outside entity as 7a for identification. We would mark the record of his -- record of travel agent as 7b for identification and similarly --

THE COURT: The same as the last time?

MR. DRUKER: They correspond to the counts of the present indictment. There are four sets or possibly five groups of these documents which were marked at the previous trial. I left those markings on, putting a line through them until we find out how the Court wants to deal with them.

THE COURT: Normally we put new markings over the old ones.

MR. CAHN: I would have no objection to putting new markings over old ones.

THE COURT: Should not show it was marked before.

MR. DRUKER: In fact, I did it on the first

document. I marked them down. On my -- for cross examination purposes, we might want to have these old markings that we would be referring to, documents marked at a prior trial with defendant's numbers.

THE COURT: What you better do on your list is have a parenthetical reference to previous numbers.

MR. CAHN: Your Honor, if the prior identifications are marked on the evidence are in fact hidden, I have no objection to the method of marking them.

I would imagine that your numbering of exhibits is going to correspond fairly well with the order in which you are going to introduce them?

MR. DRUKER: I think so. Well, not necessarily. Some of the people from the different organizations have different problems.

THE COURT: I don't think that is a problem. I have cases where hundreds of exhibits were marked beforehand, come in various order. It is understood. It is for convenience.

MR. CAHN: One issue came up at the last case while the jury was deliberating. It returned to ask the judge if he could assemble the exhibits to the count that that exhibit related. The defense objected on the grounds that any such assembly or mechanic or

organization of exhibits themselves and the evidence or summation, and the judge sustained the defendant's objection on that basis.

I believe this is an attempt to do the same thing, although in advance, to try and eliminate that problem and I would object to it.

MR. DRUKER: This was done at the last trial. The exhibits for several counts, the counter claims were one through seven. The travel agent reports, 1a through 7a, and claims to the outside entity were 1b through 7b. I think it is possible --

THE COURT: I am not going to worry about that. I will hear that on Monday.

How long do you expect to have your case take if the government finishes in three days?

MR. CAHN: It depends, number one, on the issue of the other acts.

THE COURT: Assume they are not in.

MR. CAHN: If they are not in, I would imagine -- last time what was the defense case?

MR. DRUKER: About a week.

MR. CAHN: Approximately the same time.

THE COURT: See you at ten.

MR. CAHN: Your Honor, I have one other issue

I would like to bring up. By the way -- when we left argument a week ago, Friday, I believe, -- no, it was last Wednesday. I ordered a copy of the minutes and I remember Mr. Druker expressly not ordering copies. We were given a copy of the transcript of the argument before Your Honor, and sent a bill for $2.75 a page. I was informed that the government is receiving the same carbon copy at 50 cents a page. I do not know that this price differential went on for 2,000 pages of testimony at the last trial, but I believe what happened here is in essence what is being charged the defendant, criminally --

THE COURT: Is the government going to have daily copy?

MR. DRUKER: During the trial we'll take a copy. What the defendant orders for this pre-trial, we do not need. I told the reporter that. I said, "if he orders, give us a copy at your leisure." That is why we got the copy for 50 cents, and similarly, today, I can't see any value that that transcript would be. If the defendant orders it, then I would take a carbon copy whenever the reporter wants to get it to us.

THE COURT: You are not ordering daily?

MR. DRUKER: For the trial, nothing else. The

defense -- on the defense case.

THE COURT: If the defendant orders daily copy of the trial the bill ought to be shared. The way it is --

MR. DRUKER: I would order daily when the defendant is on the stand, other than that, I would not be concerned about having daily copy.

MR. CAHN: Your Honor, if we're going to have to pay for such services of having a daily record, I would ask the government to at least, if it wishes to receive the minutes, to at least pay half the price.

MR. DRUKER: If the government doesn't care about daily copy and is not ordering, this is a matter that the court reporter deals with.

THE COURT: If the government is getting daily copy because the defense has ordered it, you're getting speedier transcript than you would otherwise.

MR. DRUKER: Granted.

THE COURT: See if there is some way we can work it out.

MR. CAHN: If the government does not wish the copy during the trial, and wishes a lower rate, I would ask the Court to order the reporter not to give them daily copy.

MR. DRUKER: Have the reporter shelve the transcripts for five days and then deliver them.

THE COURT: We will see.

TRANSCRIPT OF TESTIMONY.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ SEP 9 1976 ★
TIME A.M.
P.M.

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UNITED STATES OF AMERICA,

-against-

75-CR-645(S)

WILLIAM CAHN,

Defendant.

----------x

United States Courthouse
Brooklyn, New York

May 3, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I Hereby certify that the foregoing is a true and accurate transcript of the Stenographic notes.

Perry Auerbach

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
Assistant U.S. Attorney

WILLIAM CAHN, PRO SE

HAROLD BOGIN, ESQ.
and
NEIL CAHN, ESQ.
Attorneys for the Defendant

(Whereupon the jury was impaneled and sworn.)

(The jury enters the courtroom at 12:10 p.m.)

THE COURT: Ladies and gentlemen, I'm going to give just a few introductory remarks before counsel speaks, because some of you have not served on a jury in the past. We begin the criminal case with opening by counsel. The Government counsel is expected to tell us something about the facts that he intends to prove. The defense may speak or may reserve, because a defendant never has to prove anything.

Whatever the Government says or whatever the defendant says is simply a kind of road map to let you see the evidence as it comes in. It is not evidence. You decide what comes from the witness stand, and not from what counsel say.

You are going to have the task of deciding credibility, which is not too different from what you did in your ordinary life, and I will give you some instructions at the end of the case when it comes to my turn.

A defendant has, no defendant has no duty to testify. You didn't have to throw any inferences against him if he didn't.

When there are objections to questions and objections to exhibits I will rule on those objections

as a matter of law.

The law of evidence is somewhat complicated, and what I rule doesn't indicate anything on my part as to guilt or innocence or holding anything against or in favor of an offer of an objection that's successful.

Normally, we sit from 10:00 o'clock a.m. to 1:00 o'clock p.m. and 2:00 o'clock p.m. to 4:30 p.m. We recess in mid-morning, and we recess in mid-afternoon. The two hours without a break like this morning was a little unusual. Sometimes we might sit a little later to accommodate witnesses or try to meet a timetable. During the recesses you must be careful not to get any outside influence or any additional determination, so don't talk about the case among yourselves lest somebody express an opinion that he will have to retract. Don't talk to anybody at home or anybody else, even if you are just telling a story that came in with a remark adding something to the evidence you have heard. It is very important that the case be decided only on the evidence that comes in here in the courtroom.

When the case is over, then the parties sum up, the Government first, and then the defendant, and then it is my turn to instruct you on the law, and until that time, please keep an open mind.

Juror No. 1 serves as foreman. That means that

Mr. Gerrardy will preside over your deliberations at the end, and if you have any problems to present to the Court during the deliberations, he can talk or send me a note.

There will be 12 people voting, all equally, and also have to agree, if you can gree.

Now we are ready for the openings, and Mr. Druker, you may speak.

MR. DRUKER: Thank you, your Honor. May I have just one moment to consult with counsel?

THE COURT: Yes.

MR. DRUKER: Your Honor, Mr. Foreman, Mr. Cahn, ladies and gentlemen of the jury, again allow me to introduce myself.

I am James Druker, and I am an assistant United States Attorney, and I will be prosecuting this case on behalf of the Government along with Mr. Peter Goldman and Mr. Thomas Sclafani, neither of whom are with me now, but both of whom will be assisting me during the trial.

Now, my task right now are as Judge Judd mentioned to you, simply going to be to give you a road map of what the Government expects the case to be, and occasionally things don't go quite as expected, but this is what we expect to produce in the way of evidence

for you and while I am at it, I should remind you again that what I say to you now and indeed at any time after the trial is not evidence. The indictment is not evidence. The indictment is just the accusation, and you will be called upon later to decide upon its truth or its falsity.

What Mr. Cahn says to you when he is either objecting or asking questions similarly is not evidence.

There will be three kinds of evidence that will be before you in this trial. One will be in the form of testimony from the witness stand over there (indicating) and when the witnesses are testifying before you. Secondly, there will be various documents which will be introduced into evidence from time to time. That's evidence.

Thirdly, there may be from time to time stipulations between both sides in the case. A stipulation is generally something that's not contested and generally introduced as a time saver. For example, we might stipulate right now it's daytime, rather than have somebody from the Weather Bureau come into prove that, and finally, it actually relates to the first form of evidence.

The witnesses' demeanor is also evidence.

THE COURT: Well, you are getting into my instructions on the evidence. I think you should stick to facts.

MR. DRUKER: Now, Mr. Cahn is charged in an indictment which includes some 46 different counts, each of which charges a separate offense by him, and I am not going to read the indictment to you at this time. It's quite lengthy, and at a more appropriate time Judge Judd will read it to you.

What it charges in essence is the following: the first three counts of the indictment are under a statute which is numbers Title 18 Section 1001, and it's known as a false statement statute. Mr. Cahn is charged with making false statements in a matter within the jurisdiction of the Federal Law Enforcement Administration or LEAA, in shorthand, and the jist of the false statements in those counts that is, he affirmatively misrepresented to the LEAA the fact that claims he was submitting to organizations which were funded by the LEAA, claims for traveling expenses had already or were about to be paid on similar claims submitted by him to his home county, Nassau County.

Some of these claims will state something to the effect that, "I hereby certify that I am not receiving

reimbursement or commission from any other source" and the Government will prove that Mr. Cahn, at the same time or previously had filed claims for his travel expenses with Nassau County.

Counts four through ten are also under 1001, but a different section, and those counts charged that Mr. Cahn omitted a material fact in claims to LEAA funded organizations, and again for the purpose of getting LEAA funds to pay his travel expenses, and the material fact, he is charged with omitting the fact to the Nassau County Controller that he was being paid for these expenses from other sources.

Counts 11 through 46 refer or are brought under the so-called Mail Statute, Title 18, Section 1341, and here, simply stated, Mr. Cahn is charged with using the United States mails to send claims to a number of organizations which he was performing services. These claims were for traveling expenses which he incurred while traveling on behalf of these organizations, and again he has affirmatively misrepresented or omitted to tell these organizations that he was being reimbursed for the same travel expenses by Nassau County.

The reason that the Federal Statute applies here, is that Mr. Cahn is alleged to have used the United

States mails for sending these claims, and also he is alleged to have caused the United States mails to have been used in having these organizations send checks for reimbursement to him.

Now, just to give you a little background, and this is what we are expecting the evidence to be, so that the indictment falls into perspective, the evidence will be that during the period in question, that runs roughly from the beginning of 1970 up until the end of 1974, Mr. Cahn was District Attorney of Nassau County, New York.

During that time he was either an officer or a director or a consultant or a trustee for a number of organizations, among others, those being the National District Attorneys Association, the National College of District Attorneys, the Police Task Force, which had its base out in California, was affiliated with the Criminal Justice Commission Standard and Gold, also the National Center for Prosecution Management, and that he was a speaker for the Arizona County Attorney's Association.

Now, from time to time Mr. Cahn will be called upon to travel to these various associations or organizations in places like Houston, Texas or San Francisco

or Chicago or wherever he was called to do so by them. He would either lecture or serve as a consultant or as a panelist or serve on the Board of Trustees.

The evidence will be that on each of the 46 odd occasions referred to in the indictment, he was also traveling actually or purportedly on business for Nassau County, so on his return from each of these trips Mr. Cahn would submit a claim to the controller of Nassau County or actually two claims in one. He would generally claim reimbursement for his non airfare expenses. This claim would include reimbursement for his hotel bills, meals, gratuities, possibly for taxi fares, possibly for automobile rentals.

A separate claim would be submitted with regard to his airfare, signed by Cahn, but on behalf of a travel agent, so that as payment for Mr. Cahn's airfare expense on the trip to the travel agent.

Either on the same day or within a short period of time Mr. Cahn would have his secretary send a letter to the National District Attorney's Association or the National College of District Attorneys or whatever organization or association was involved, and in the letter he would claim reimbursement for the same airfare listed on the County claim, and on occasion for the

hotel expenses, on occasions, taxi expenses that he already claimed from the County.

In essence, the Government alleged one expense, he had one airfare, one hotel room, one cab fare, and he would resubmit two claims and was paid twice.

Now, Count 2 differs just slightly in that it charges that in November of 1974, Mr. Cahn aided and abetted or counseled one Joseph Spinnato to make a false statement to an agency within the jurisdiction of the United States Government, and there the proof will be that Mr. Cahn, on a certain trip to San Francisco and Chicago, not only sought reimbursement for himself, but that he also sought reimbursement for Joseph Spinnato, both from the County and from another organization, and he caused Mr. Spinnato to put into the mail or put into the works these two claims without Mr. Spinnato really knowing what Mr. Cahn was up to in essence.

There will be two instances during the course of the trial in which you will see that Mr. Cahn actually submitted three claims for the same travel expenses. In one instance, the evidence will be that he took a trip purportedly on behalf of Nassau County and on behalf of the National College of District Attorneys and on behalf of the National District Attorneys'

Association; that when he returned from the trip he billed the County for his travel expenses, he billed the National District Attorneys Association for his expenses, and he billed the National College of District Attorneys for his expenses.

Again, the gist of these mail fraud counts is not only that he used the mail, but that he wilfully conspired to seek reimbursement from these entities, and you can see what was going on here. They total up to probably somewhere in the neighborhood of $15,000. It might be more or less.

This isn't a larceny charge. He is not charged with stealing a certain amount of money. The charge here is that he defrauded by failure to state to those organizations seeking and receiving reimbursement from other organizations.

Now, Count 46 of the indictment is a similar mail fraud count, and it charges again what the Government referred to as double billing. Two claims for the one expense without revealing to each entity the facts that he was seeking from the other. In addition, Count 46 has a separate specification which charges that while traveling on behalf of the National District Attorneys' Association Mr. Cahn stayed in a

hotel room in Las Vegas, Nevada, and while the hotel was given to him on a complimentary basis, which is as it sounds, means free of charge, and so on return he submitted his regular claim to the County, then to the National District Attorney's Association which he had his secretary mail and in that claim he sought reimbursement for the hotel room which he had not been charged for in Las Vegas, Nevada, and the Government must prove beyond a reasonable doubt this is not accidental or inadvertent, that Mr. Cahn did these acts knowingly.

Now, you hear the evidence from the witness stand. At the conclusion of the evidence in this case you will hear from counsel in which terms are summations, and that will be our argument to you based on our views or recollections is of what the evidence is in this case.

Following that will be a part of the case which is just as important as the presentation of the evidence, and that will be the presentation of the law, and that Judge Judd will give to you, and I ask in this case just a few things.

It's going to be at times a somewhat tedious case. There are a lot of questions I will ask that I am

sure the defense counsel will object. Try your best to pay attention to the evidence. Throughout the course of the trial you watch each witness, observe the demeanor of the witness. Judge Judd will tell you at the end of the trial how that comes into play.

Furthermore, when each witness is on the stand ask yourself what motive does he or she have to either tell the truth or to not tell the truth, and then I will ask you also to apply your good common sense to the evidence you have heard, and along with that, just as important to apply the law as given to you by Judge Judd, and whether or not you agree or disagree with the law, your sworn tasks as jurors to follow it and apply it to the facts.

Now, just a couple of other matters that will come up, and which I will touch on briefly.

There will be a good deal of evidence relating to prosecution fund. What this was, this was a fund and still is a fund in the District Attorney's office for Nassau County to draw on for its investigative work. The evidence will show that there was between 150 or $200,000 a year available for the district attorneys investigative costs.

There was also within that, Mr. Cahn had a petty

cash fund which may be referred through the trial as the William Cahn fund, and this was available to him in the amount of $7500 if he needed money in a hurry. Ordinarily when a claim is submitted to the prosecution fund to the county controller for reimbursement, the controller orders the claim, makes sure it's in order, looks at it and then he allows the check to be issued.

In an emergency situation or in a situation where there isn't time to audit it, the District Attorney can write checks and then the claims for that are submitted later on and audited later on.

You will hear testimony from the Controller of Nassau County, and he will tell you among other things procedures in regard to the prosecution fund that were followed. He will identify the claims which are involved in this case, and I might add, to try to simplify things, what we shall endeavor to do is have the various exhibits marked so they correspond with the charges in the indictment.

The claims that Christ identified will be marked as Government's Exhibit 1 through 46 corresponding with the counts of the indictment.

In each instance the claims or the letters sent by Mr. Cahn to the other organizations for these same

travel expenses will be marked as an A group, exhibits 1A through 46A. Certainly, there may be evidence introduced from Mr. Cahn's former travel agent, airline secretary, and will be a B set marked, and again this would be 1B through 46B. Each group of the indictment again is a separate offense or charges a separate offense, and Judge Judd will instruct you in that regard what your obligation is or just ask you at this time to bear that in mind and consider each count in your deliberations as a separate count.

Now, following the presentation of the evidence as I have outlined to you, and following the Judge's charge, you will deliberate, and at that time your task will be to find or determine the facts of this case, apply the law to them and then to decide whether or not the defendant, William Cahn, is guilty as charged, and if at the conclusion of the evidence it's gone as expected, and as I have outlined to you, the Government will indeed ask for a verdict of guilty on each and every count of this indictment.

Thank you.

THE COURT: Ladies and gentlemen, I pointed out to you to distinguish what counsel tells you and what actually comes out from the witness stand. You may

keep that in mind when you listen to Mr. Cahn. He has a right to represent himself as an experienced lawyer. Ifhe takes the witness stand, that will be proof when he is talking about the charges.

Mr. Cahn, you may proceed.

MR. CAHN: If the Court pleases, Mr. Druker, Mr. Goldman, ladies and gentlemen. First may I apologize for the awkwardness which I know I must out of necessity follow as a result of this self-representation. But, I join Mr. Druker and ask that you decide this case solely on the evidence presented to you in this courtroom. Solely on that evidence, and the law as the Judge gives it to you, and not let the fact that I am representing myself affect your deliberations or play any part in your verdict.

I will indeed try to refer to myself as the defendant at all times, but if there are lapses when I refer to myself in the first person, please forgive me, and I ask the Court's indulgence. I can assure you that that will be unintentional and not deliberate.

As his Honor pointed out to you, the defendant is under no obligation to open his case. He is under no obligation to tell you what he expects to prove, and it is important to know what I say here is not evidence, as well as Mr. Druker has informed you that

what he says in his opening is not evidence. But, I beseech you to listen and keep in mind each of the elements of the charge to which Mr. Druker referred. Each element of these criminal charges, and remember that the People must prove each element of those charges beyond a reasonable doubt, not by inference, not by innuendo and not by the wild imagination of a prosecutor, but beyond all reasonable doubt.

As you listen to those facts I ask you to keep that in mind.

May I offer what I believe the evidence will indicate. As you probably could discern from Mr. Druker's opening, this is a saga of claim forms. A saga which my judgment has been twisted and tortured in an effort --

MR. DRUKER: I have to object to this commentary.

THE COURT: I think Mr. Cahn is going to try to show that the documents have been twisted and tortured.

MR. CAHN: That is exactly the point, your Honor. Thank you.

They have been twisted and tortured and in an effort to fit the square peg of guilt into the round hole of innocence, and to do that, Mr. Druker has left off a beginning, he has left off an ending, and he has cut off the sides, and I submit that the evidence of the

beginning and the ending will prove that the acts charged to the defendant were by no means fraudulent, were by no means deceitful, but the evidence will show that these acts were believed by the defendant to be proper exercise of administering perogatives of a District Attorney.

The facts will indicate that the defendant came into the office of the District Attorney in 1950 as an assistant District Attorney, and in 1954 was asked to form the first rackets bureau, the first organized crime bureau within the District Attorney's Office of Nassau County, and he headed up that Bureau.

Thereafter, the defendant was given the responsibility of investigating and prosecuting all major investigation cases in that office, and that was true until 1962 when the defendant was appointed the District Attorney of Nassau County and elected thereafter on four separate occasions through 1974; twelve and a half years.

As District Attorney the evidence will indicate that the defendant maintained his active interest in investigations, and this necessitated on the part of the County a great deal of travel.

Now, the evidence will show that in 1970, the

defendant received a telephone call from an individual who became known to him under the code name of Sam Houston. That call came to the District Attorney's office while the then Deputy Chief Inspector, one Charles Spahr was in his office.

Sam Houston, after discussing certain things with the defendant, requested that the defendant meet him alone in a certain part of a parking lot of Roosevelt Field. Pursuant to that discussion the defendant did so meet with Sam Houston, but, unbeknown to Sam Houston, this meeting was under the watchful eye of Chief Spahr of the Nassau County Police Department.

The evidence will indicate that at that time Sam Houston offered to be an informant of the District Attorney, William Cahn. He stated, however, that he had a relative who was an informant for some Governmental agency, but mentioning who the relative was, not mentioning which Governmental agency, and he stated further that this relative was killed as a result of some kind of leak or information about him which got out, and after offering the information and stating that he wasn't primarily interested in money, he did want to get paid, but because of his experience with his relative he insisted and was clamant in his insistence

that no claim, no voucher of any kind be submitted for the monies used to pay him.

The evidence will show that this was quite unusual, but he made that a clearcut prerequisite for any information which he would be willing to give. He also stated that if he were used as an informant he would no longer meet me in the Metropolitan area, but because of his position he wouldbe able to meet me almost anywhere in the country, almost at any time. As another condition, he stated that in order for me to receive his services I would have to give the further promise of not making any attempt to learn his true identity, telling me that that's the reason he came to me, because of my reputation with the people he knew, and if I did give my word he knew he would rely on it.

The difficulty of paying him under such circumstances was discussed. The methods that we were using were discussed, but he insisted no claim form, no voucher of any kind for the monies used. The evidence will show that I told him, "Well, I am not buying a pig in a poke. What have you go to indicate that you can do what you say you can do?" And information was given to me, enough so that I would make inquiry about this particular method of payment to which Sam Houston

referred.

The evidence will show that on the following day after giving due and deliberate thought to the possibilities involved, I met with the controller of Nassau County, at that time a man by the name of Angelo Roncallo, at which time we discussed the need of confidentiality of this informant, and we discussed the possibility of paying him without submitting County vouchers. Mr. Roncallo, as the evidence will show, told me that that's impossible. If there is a payment by which the County funds would have to be made good or used he would want a voucher.

At that time I proposed an idea to the County Controller, and very frankly there is going to be some dispute about this particular part of the conversation, but an idea to which the defendant, William Cahn, of Nassau County thought the controller offered no objection. As a matter of fact, the evidence will indicate the controller said, "It seems to be your money. You can do with it as you see fit." And the idea did involve the prosecution fund of Nassau County and the investigation fund of Nassau County, and if I may, let me show you what I believe the evidence will indicate in reference to the prosecution fund and the investigation

fund.

The evidence will indicate that in relation to investigations or county related business or payment to informants, which is a filthy part of the business, there was established by the Board of Supervisors of Nassau County a prosecution fund. Never heard of it referred to as the William Cahn fund, but I could understand the possibility, and the amount was $7500. At one time it was far less, and at the present time it's $15,000.

Now, the evidence will show that this prosecution fund was a checking account on which the District Attorney could sign a check and get money immediately. It was like a petty cash fund, but it was vitally different in that the monies used had to be returned to the prosecution fund as quickly as possible, and the specific purposes, the specific purposes, and I ask you to keep this in mind, ladies and gentlemen, the specific purposes forthe monies used had to be listed. The monies were replenished to the prosecution fund from the general investigation fund, which the Board of Supervisors gave to the Department of District Attorney, and that investigation fund, which was for the purpose of conducting investigations and related business, was

in the amount of $150,000, $170,000, andperhaps even more.

If you will, and if I may repeat, the evidence will show that there was a checking account in the amount of $7500 which could be used by the District Attorney for County business only, and then had to be replenished so the $7500 could remain as constant as possible. It wasn't replenished after it was all gone. As the evidence will show it had to be kept at the level of $7500 as much as possible, and thereafter the monies had to be returned as quickly as possible, and one of the proper uses of the investigation fund, as the evidence will indicate, was to advance money to the District Attorney or to the Assistant District Attorney or any member of the District Attorney's staff who was about to embark on a trip on behalf of the County, on behalf of the County and needed the money for the expenses of the trip.

(Continued on next page)

MR. CAHN: (continuing) In other words, the evidence will show that this money was an advance, a loan to the indivdual who was going on the trip, whether it was the District Attorney himself, an Assistant District Attorney or an investigator who was assigned to the District Attorney's Office.

Here is an advance for the trip (indicating). On return from the trip, a claim, a County voucher would be signed by the individual who made the trip, either in his own name, and if it was the District Attorney it would be in the name of William Cahn or it was an Assistant District Attorney, it could be in the name of the Assistant District Attorney taking the trip. It always had to be signed on the bottom, however, by the chief officer, the District Attorney or the acting District Attorney or as the evidence will indicate in most cases those claims to the County were made out in the name of the prosecution fund, and the check that was delivered from the County would go directly and be made directly to the prosecution fund, not to any one individual.

The evidence will indicate that in order for the claim to the prosecution fund to be repaid, the exact use, the specific use of the funds had to be listed.

The County controller would not pay, as the evidence will indicate. The County controller would not pay a claim which was listed "advance for trip to so and so." No way. The County controller would only pay a claim that specifically listed the purposes for which this advance was used, and so it might say "Hotel bill, taxi cab fare," it might say "car rental", it might say, "gratuities," it might say, "airfare" but again, the airfare was paid almost directly to the travel agency, in most cases.

On these claims would be those specific expenses, but the claim was for repayment of the advance, and then if there was no other repayment to the County and there was a County obligation to pay, and the County expense, yes.

At that time the County paid for the expenses of the trips.

The evidence will also show, as Mr. Druker pointed out, that in 1962, after the first election, the District Attorney of Nassau County, the defendant in this case, became actively engaged in an organization of prosecutors, of district attorneys throughout the country, called the National District Attorney's Association.

The evidence will show that the defendant was

elected to various positions within that organization, including vice president, president-elect, and eventually president of the National District Attorney's Association. The evidence will also indicate that the defendant was appointed to many committees within that organization of prosecutors, and in most instances, as the committee's chairman.

As such officer and official, the defendant became obligated to travel extensively on behalf of the Nassau County District Attorney's Association, lecturing on numerous facets of the criminal justice system. As this was not County business, and this could not have been paid by the County funds, and the evidence will indicate, ladies and gentlemen, that if that was the purpose of the trips alone, if that was his sole purpose, no advance from the County Prosecution Fund could be used. No monies whatsoever if that was the sole purpose of the trip.

The evidence will also show that the defendant helped establish and became a member of the Board of Regents of the National College of District Attorney's Association with the Bate College of Law, the University of Houston in Houston, Texas. He also became a member of its faculty. The defendant was also

appointed as a consultant and an active member of the Advisory Board for the National Center for Prosecution Management.

The defendant was also appointed as an active member of the National Advisory Board of the National Police Task Force for the National Advisory Commission on Criminal Justice Standards and Golds.

The defendant was also appointed as an active member of the Advisory Board of the National Legal Data Center on Obscenity and Pornography.

The evidence will show that the defendnat traveled extensively on behalf of each of these organizations.

This, too, ladies and gentlemen, was not County business. This, too, could not be paid from County funds, and if this was the sole purpose of the trip, no monies whatsoever could be drawn from the County or the prosecution fund.

The evidence will also indicate that the defendant was solicited by different organizations throughout the country to lecture on various problems of law enforcement, and in most instances there was an agreement to pay expenses, and in some instances, there was agreement to pay an honorarium or a consultant's fee. But here, too, I repeat, that if this was the sole purpose of the

trip, this was not County business.

County monies could not be used, and an advance from the prosecution fund could not be drawn. The evidence will indicate that in 1970, at the time this meeting with the aforementioned informant, Sam Houston, took place, the District Attorney of Nassau County was embarked on an investigation which eventually lasted for two years, and because it was an investigation involving conditions within the Nassau County jail, wherein it was the purpose to put undercover agents in the jail to truly learn what was going on at the jail, travel, extensive travel was required and interviews were conducted by the District Attorney and members of his staff in various sections of the country. During this period of time, coincidentally on the major investigations involving homicides, organized crime and other major cases, were referred to the District Attorney's office, and these cases, too, required extensive travel, and as a result of this investigation and as a result of the prerequisite adamantly put before me by Sam Houston, the informant, this was the method as the evidence will show, thought by the defendant in good faith, could properly handle the situation of payment to Sam Houston without submitting a claim voucher.

Each and every time, as the evidence will indicate, the defendant was called upon to travel on behalf of one of the organizations to which he was or with which he was associated.

He tried, if possible, and because of locations, many instances as was pointed out by Mr. Druker, over the course of 1970, '71, '72, '73 and '74, perhaps over 40 times in the number of times traveled there was the possibility of arranging County business at the same time; and the purpose, as the evidence will indicate, of arranging County business at this time was the ability, therefore, to draw an advance from the prosecution fund as a loan, as an advance.

The defendant, when he traveled on County business was entitled to get this advance whether or not there was other business.

The evidence will then indicate that on return a claim was submitted to the controller for repayment of the advance. Not for payment of the expenses, ladies and gentlemen, for repayment of the advance. But, in order to properly have the advance repaid, the evidence will indicate that the specific purpose of the advance had to be listed. That the mere statement "advance for trip to San Francisco" would not have been paid by the

County Controller, and so when for the sake of discussion -- in one of the accounts there is a trip to San Francisco. On return you would see the hotel room in San Francisco, meals, airfare to San Francisco; these were advances, and the controller paid back the advance.

Now, where did the money come from to pay the informant? It was the intention of the defendant to have the organization for which he was traveling, the one who solicited his expertise, to pay for the trip, and so, on return, the bill went out to the association pursuant to an agreement that expenses would be paid, and sometimes honorariums, and sometimes fees, and so the letter went out to the organization requesting payment of the expenses.

The evidence will show, ladies and gentlemen, that the only entity to pay the expenses of the trip was the entity for which the defendant, William Cahn, the District Attorney of Nassau County, traveled at their request, and for their purpose. They paid the expenses and that expense money was paid back to the County in two ways.

The evidence will show that in two instances the cash, itself, went back to the County and was deposited

with the County Treasury, and the other instance was that as the evidence will show, that the defendant, William Cahn, cashed the check when it came in from the association, the National District Attorney's Association, the National College of District Attorneys, and held that money in an envelope marked "SH" Sam Houston, locked in the private closet of his private office where only two persons had the keys; his secretary and the District Attorney, the defendant.

On each occasion that he met Sam Houston at these various places, monies were used, were taken from the envelope and used to pay the informant.

Now, how did the meetings --

THE COURT: You have been a little more than a half hour. How much longer do you have to go?

MR. CAHN: Not much.

THE COURT: I will ask the jury to stay.

MR. CAHN: How did those meetings take place? The evidence will indicate that the defendant never knew where Sam Houston was or could be reached, so the evidence will show that once, twice, twice every two weeks, three times a month Sam Houston would call the defendant and say, "Where are you going to be? Okay, I can meet you there."

It wasn't all occasions when he received money. Sometimes $500, sometimes $750, sometimes even $1000. It wasn't even all occasions, but on the occasions that he received the money, ladies and gentlemen, on each of those occasions, the evidence will indicate that it was observed by at least -- except for the first two occasions, I think, but on each of the other occasions, approximately 30 in all, it was observed by an assistant district attorney and deputy chief inspector, Charles Spahr, or both, each time, and each time the evidence will indicate that monies were paid on return from the trip and, an affidavit, one single sheet of payment was made by the District Attorney and this was observed by the assistant District Attorney, Joseph Spinnato. He, too, made an affidavit of payment, and this was observed by the present assistant chief inspector, Charles Spahr. He, too, signed an affidavit, and those three affidavits were kept in my private office, again in the private closet of the defendant, the District Attorney.

Each time a meeting or approximately all of the times there were occasions when it wasn't followed, but almost each and every time there was a meeting with S.H., it was listed on the sheet of paper which was also kept locked. No copies.

This money, as the evidence will indicate, that was paid to Sam Houston in 1970, '71, '72, '73 and '74, totaled to approximately $4,000 a year. Exactly $19,750 and the affidavits will indicate that.

But a record of the monies received wasn't kept. It was determined, as the evidence will indicate, in October or November of '74 that the amount received by these organizations for the expenses of travel was approximately $19,750, and so what was done? As the evidence will indicate it was that as soon as the monies were received by the defendant, the District Attorney of Nassau County, they were County monies, they were to go back to the County, and in two instances, the cash went back, and in the other instances they were held by the defendant and used for a County purpose.

The method of returning the County's money was not as the evidence will indicate. Was not within the purview or the business of the association for which I traveled or with which I was associated. Therefore, as you can see, there was only one payment for expenses and, therefore, where the charges are that I stated there was no dual compensation, that there was no monies received, that there was no lie, either. There was no fraud, there was no intent to deceive, because in truth

and in fact, there was no dual payments, there was no double payments, there was one single payment for the expenses.

MR. DRUKER: Your Honor, I object to that now as argumentative rather than a commentary as to what the evidence will be.

THE COURT: I think you are getting a little oratorical, Mr. Cahn. You have been 40 minutes on an opening, and I think you have pretty nearly exhausted the subject.

MR. CAHN: I am coming to an end, your Honor.

The evidence will show that the method used was innovative, different, but was for no other purpose than to discharge what the defendant believed to be a proper exercise of his administrative judgment as District Attorney of Nassau County, and I am certain that after listening carefully to all of the evidence, that the evidence will show and you will believe that the defendant did not make any false statement to any agency of the Government as related in Counts 1, 2 or 3, did not fraudulently, deliberately or illegally withhold information from any Governmental agency as related in Count 4 through 10, and in no way was guilty of using the mails to defraud, to defraud anyone, and I am

certainly sure that you will believe after listening to the evidence that you will find the defendant not guilty on each and every single count of the indictment.

Thank you. Thank you, your Honor.

THE COURT: We will take a recess now until 2:15, and remember now, don't talk about the case among yourselves or with anyone else, and if you meet anyone in the courtroom while you are in the lobbies or in the hall, don't talk with anyone at all.

Thank you.

(Whereupon the jury left the courtroom at 1:15 p.m.)

THE COURT: Just one matter I might take up. I am not sure I ruled on that withdrawal of Count 45. Is there any reason why it shouldn't be withdrawn, Mr. Cahn? The Government referred to a Count 46, but that won't affect it.

MR. CAHN: Your Honor, on one of the basis of twisting and torturing was the basis of Count 45.

NEIL CAHN: Your Honor, if you remember, Count 45 was specifically referred to in the motion to dismiss, concerning the knowing or possibly knowing use of perjured material in securing that indictment. We were told the first thing when we came to trial that they wanted to dismiss it, the entire incident concerning Count 45, and

as it may relate to credibility may become independently important in this case.

I would like -- I cannot forsee Government to offer evidence on that count.

MR. DRUKER: Your Honor, it's simple. I have read the system over from the first trial. I have determined that the Government can't really establish it, in that this society it's ambiguous as to whether it's really a victim or not, the officer of the society testified on direct examination, I think, that he would have stated two stays, on cross-examination he said, Cahn said it very strongly he would have paid him, and I just decided as a tactical notice I'm not in the interest of the Government to pursue this count.

THE COURT: I don't see any harm in withdrawing it. Motion granted.

MR. DRUKER: Your Honor, there is one thing as long as that matter has come up. In the first trial the Government put on the representatives from the various organizations, and we would ask them the questions "Did Mr. Cahn send these claims? Did he tell you he was submitting similar claims to different organizations?" And the answer was "No."

"Did you have a policy to submit to?"

"The policy limited it" and they would state

what it was.

After that, I would ask, "Had you known that the defendant was submitting similar counts to Nassau County, would you personally have allowed this claim?"

In most of the cases the answer was "No."

In one case the answer was "Yes."

I have spoken with some of the legal scholars and they feel that this might have been reversible or that it's not relevant what the individual would have done. That was because the individual might be acting in contravention to the questions.

What I am asking, your Honor, based on this, it's the Government's intention to just ask the witnesses what the policy of their organization was, not what they personally could have done had they known the tri-state of affairs and I want to make note in advance any objection to any questions the defendant might request along that line.

THE COURT: I will wait until cross-examination before I rule on defense questions.

(Whereupon Court was adjourned until 2:15.)

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TIME A.M.
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645(S)

WILLIAM CAHN, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

May 3, 1976
2:20 o'clock p.m.

B e f o r e :

HONORABLE JERIN G. JUDD, U.S.D.J., and a jury

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

EMANUEL KARR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
FEDERAL COURT HOUSE, ROOM 302
225 CADMAN PLAZA EAST
BROOKLYN, N. Y. 11201
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Official Court Reporter
U.S. District Court

95

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES O. DRUKER, ESQ.
Assistant U.S. Attorney
-and-
PETER A. GOLDMAN, ESQ.
Assistant U.S. Attorney

WILLIAM CAHN, ESQ.
Pro Se

NEIL R. CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

Khb 1

(On the morning of May 3, 1976, a jury in the above-entitled case was duly chosen. The openings were then made before the jury and court was then adjourned until 2:15 p.m. At 2:20 the trial proceeded as follows:)

THE COURT: All right, bring in the jury.

(The jury took its place in the jury box.)

THE COURT: We are all ready.

Mr. Druker, you can call your first witness.

MR. DRUKER: Thank you, your Honor.

The Government calls M. Hallsted Christ.

M. HALLSTED CHRIST, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Christ, would you state your home address, please.

A I live at Lemson Lane, Oyster Bay.

Q Would you tell the jury the place and nature of your present employment.

A I am the County Comptroller of Nassau County.

Q For how long have you been so employed or engaged?

A I was appointed to the position in 1973 and took

office on January 3rd, and I am now serving a four-year term that expires in 1977, the end of '77.

Q And you are also an attorney?

A Yes, I am.

THE COURT: Wait a minute. Your four year term expires the end of '77, does that mean that you took office on January 3rd of '73 or '74?

THE WITNESS: My appointment, your Honor, I took -- I was a one-year appointee and then was elected to a four-year term.

THE COURT: That takes us to 1977?

THE WITNESS: Through 1977.

BY MR. DRUKER:

Q And you are also an attorney, Mr. Christ?

A Yes, I am.

Q Prior to being Comptroller of Nassau County, were you employed?

A I was a Councilman in the Town of Oyster Bay and a general practicing attorney in Nassau County and also New York City.

Q Now, do you know the defendant William Cahn, seated to the right over there?

A Yes, I do.

Q And for how many years have you known him?

A Oh, I have known Bill Cahn for, I guess, ever since he was in the District Attorney's Office and probably -- I would think conservatively really 20 years.

Q And did you know him as District Attorney of Nassau County from the period of 1962 to 1974?

A Yes, I did.

Q Now, as Comptroller, would you tell the jury briefly what the duties and responsibilities are and what your office does and in particular with relation to the financing of the District Attorney's Office.

A All right.

The County Comptroller has the responsibility to keep the general books of account of the County of Nassau, which means that all payments made by the County have to be entered in the books of account, so we have a ledger of expenditures for county purposes and we also review all claims that are submitted to the County for payment, judging those claims as to legality and the propriety of the dollar amount sought to be paid.

We do audit work as well.

Those are the principle function I think that would impact -- and also payroll work -- this would impact on the District Attorney's Office.

Q Now, are you familiar with the fund called the

District Attorney's Prosecution Fund?

A Yes, I am.

Q And what is that, generally?

A That fund is what is -- really, it is referred to as a petty cash fund for the District Attorney's purposes, for the general financing of the prosecutorial powers, and it is a fund that differs from the general payment of claims in the county. All claims by the County that are honored must be ultimately approved by the County Comptroller except insofar as the monies come out of a petty cash fund. There the person who has charge of that fund can sign the checks and bind the County up to whatever the limits of that petty cash fund are, and in the case of the fund that youare talking about, the limit, at least at the last part of Mr. Cahn's tenure, was $7,500.

Q That would be the amount upon which he could write a check without having to submit a claim ahead of time or be subjected to an audit ahead of time?

A That is correct, and that is provided by the State law as well.

Q What was the total funding that was in the prosecutorial fund during the period 1970 to 1974, on an average annual basis?

A Well, it's not really called a fund, at that point

it is an investigation fund, and there the Board of Supervisors appropriate various amounts of money, but I think in the last year of Mr. Cahn's tenure it was $160,000 that they allotted to him for this investigation purpose.

Q Now, there are a number of claims that are submitted on an annual basis by the District Attorney's office to your office for auditing and payment; is that correct?

A That is correct.

Q And if I told you that some of these bear the heading, District Attorney's prosecution fund, and some bear the heading, William Cahn, can you explain the difference between those two funds?

A The prosecution fund claims are all reimbursement budgets for that prosecution fund, and that would mean that the District Attorney had, prior to submitting that claim, already dispersed the fund without the Comptroller's approval, without issuance by the Treasurer, and the money then flowed back into that petty cash fund when it was paid.

The William Cahn claims are merely claims by Mr. Cahn as a County employee for reimbursement for his actual and necessary expenditures of whatever he laid out for the County.

Q He was treated as a vendor, wasn't he?

A He was -- well, we call it a vendor, vendor is a little misleading, he was a County employee who expended

money for County purposes and we reimbursed him.

Q And with regard to the claims -- you say the District Attorney's prosecution fund, what would those claims be?

A Whatwe call them?

Q As opposed to the William Cahn fund, these were claims for which the expenditures had not previously been withdrawn by the District Attorney; is that correct?

A The William Cahn claims, that is correct --

Q Now --

A (Continuing) -- but the Prosecution Fund, that -- that is money that was already expended out of that fund and then it is reimbursed by the County to the fund.

Q On these claims, the District Attorney lists, or whoever else is submitting the claim, he lists the expenses and the amounts; is that correct?

A That is correct.

Q And do you look behind the statements on the face of these claims to determine whether or not the expenses were actually incurred?

A Well, yes, we require vouchering to support those claims, and many of the claims that you have there are for hotel bills and air fare tickets and things of that nature, supporting the expenditure.

Q Now, I am going to show you a group of documents marked as Government's Exhibits 1 through 46 for Identification.

Now I will ask you if you recognize those documents and can you identify them as being business records kept and maintained by your office in the ordinary and usual course of its business?

A Mr. Druker, I have examined the claims prior to take the stand and --

Q Within the last half hour; is that correct?

A Yes, and they all bear the perforated stamp of my office and they also contain the warrant number by which the claim was paid.

Yes, they are copies of claims in my office that we maintained as a regular business.

Q And when did you take office?

A In 1973, January.

Q So that the claims dated prior to January 1973 were submitted to your predecessor who was Comptroller; is that correct?

A That is correct.

Q And who was that?

A Angelo Roncallo.

(Continued on next page.)

10 Christ - direct

Q And obviously everything since that time was submitted while you were Comptroller?

A That is correct.

Q Now, with regard to those claims, each of them represents a separate trip taken or purported to have been taken by the District Attorney and members of his staff; is that correct?

MR. CAHN: I will object to the characterization of something that is not in evidence, your Honor.

THE COURT: All right. It is a leading question. I will let Mr. Druker approach it a different way.

Q Sir, what are those documents?

A They are claims for reimbursement for various expenditures out of the Prosecution Fund.

Q And in most or in all instances does each exhibit consist of two separate claims?

A Yes, they do, but in a few instances there was just a single claim.

Q Where there are two claims, what is the differentiation between the two, generally?

A As I found it, one related to air fare and the other for the other miscellaneous expenses.

Q For miscellaneous expenses.

Now, are those claims generally on the Prosecution

fund or on some other fund?

A they would all be permissible expenditures out of the Prosecution Fund.

Q what about with regard to air fare?

A the same.

Q Was there a separate --

A Well, some have a separate vendor, but again, as it indicates, that is the character of expenditure that would be charged to the Prosecution Fund, and for that Mr. CAhn should have made a check out to an air carrier or a travel agent.

Q Can a check be issued in payment of these expenses without the approval of your office?

A Under the petty cash system, yes, it can.

Q Other than that?

A Other than that, it cannot.

Q Now, is there any way from examining those documents that you can tell whether or not checks were issued to the claimant pursuant to the claims on each of the documents?

A In each instance, Mr. Druker, there is a warrant number with a date and that tells me the date and the warrant under which we paid or repaid the Prosecution Fund the money that was previously expended by the District Attorney out of that fund.

MR. DRUKER: Your Honor, I'm going to offer these into evidence.

THE COURT: I think maybe Mr. Cahn has seen them but do you have any objection to them now?

MR. CAHN: May I look at them, your Honor?

THE COURT: All right, take another look.

(Mr. Cahn then examined the documents.)

MR. CAHN: May I inquire, your Honor?

HTE COURT: Yes.

This is an inquiry called a voir dire, which goes to the authenticity of the documents, and it is done before cross examination before they are admitted.

VOIR DIRE EXAMINATION

BY MR. CAHN:

Q Mr. Christ, prior to the time that you assumed the office of County Comptroller, you said that Angelo Roncallo was the Comptroller?

A That is correct.

Q Do you know whether or not at the time the claim were submitted, these claims to which you referred were submitted to the County when Mr. Roncallo was County Comptroller, whether there were any specific understandings with Mr. Roncallo as to the method of introducing or submitting these vouchers or as to any other arrangement that might have

been made insofar as these vouchers were concerned?

A Well, I don't know what arrangements were made with Mr. Roncallo, I wouldn't speak for that.

Q So you wouldn't know if there were any such arrangements as to the method of submission of these vouchers prior to the time that you became Comptroller of Nassau County?

A Well, when I became Comptroller, I don't believe, except in really one instance, that the method of submission changed a great deal between my tenure and that of Mr. Roncallo. We did take some steps to safeguard the confidentiality of those -- but -- those claims.

Q Mr. Christ, I will ask you again:

Do you know whether or not any arrangements, special arrangements were made between Mr. Roncallo and the District Attorney prior to the time that you became Comptroller?

MR. DRUKER: I object as asked and answered.

THE COURT: No, I think he answered but he can give us a specific answer.

A I don't, I don't know what arrangements were made with Mr. Roncallo.

Q Number two, Mr. Roncallo -- Mr. Christ, I am sorry - weren't there letters submitted to the Comptroller even when you were Comptroller along with these claims that refer to the Prosecution Fund and the confidentiality of some

of the trips?

A Well, there are letters that are in that specific group of claims which are, I think, a reflection of the letters that maybe you refer to, they are in the back, I don't think they -- We may have them here --

Yes. (indicating)

MR. CAHN: Your Honor, I have to beg the Court's indulgence.

THE COURT: Yes, all right.

(Mr. Cahn then perused the documents.)

Q In some of the claims, Mr. Christ, I specifically draw your attention to this one (indicating), there are two claims --

THE COURT: This is with reference to exhibit 2 for identification.

Now, what is your question?

Q Can you explain the difference?

A Between, you mean the claim for $427 and the one for $1,517.93?

Q Yes.

A Well, I don't know, I don't -- There is a difference in amount, I don't quite understand the question.

THE COURT: Well, are they different expenses?

THE WITNESS: One, the $427, relates to meals and

gratuities, taxis and that sort of thing, and the other relates to ATS travel, a trip to Chicago.

Q In the amount of what, sir?

A $1.517.93.

And attached to that is three tickets for air fare.

Q And there is a third claim in there; is there not?

A No, there are only two claims.

There are only two claims and each claim is supported with two County Claim Forms, one having the details of the trip and the other having a mere cover sheet that indicates that the claim was the subject of a confidential investigation.

Q And could you tell the Court and jury, if you will, Mr. Christ, how that came about?

A It came about because of my concern that the confidentiality of the claims that you sought to have confidential was being compromised in our County Comptroller's Office because if we keep on file and process through the office all of the supporting documents, which means the air fare travel and all the receipts and all the descriptive information with respect to the claim, well, prior to my becoming Comptroller that information was routed through our office in a normal way and only after that routing did it then get field, which meant

that people in the bookkeeping section, people in our keypunch section, people in the claims section on receipt of it they all had an opportunity to examine the details of the confidential claim, so that this (indicating) and the duplicate claim was put in a system that evolved after I became Comptroller --

MR. DRUKER: Your Honor, excuse me, I'm beginning to think this is more a process of cross examination than a voir dire, which is what Mr. Cahn asked for.

MR. CAHN: There are two separate claims, your Honor, and --

THE COURT: Is it your contention that any of these are not a part of the files kept in the regular course of business?

MR. CAHN: Well, I am going to object to those claims which were filed prior to Mr. Christ taking office as Comptroller on the ground that he has already testified that he does not know under what circumstances, if any, the claims were filed with Mr. Roncallo.

THE COURT: Well, since they are on file in the public office, I will receive them subject to any further information that may be brought about them.

MR. DRUKER: Thank you.

THE COURT: They may be marked.

THE CLERK: government's exhibits one to 46

marked in evidence. 54a

THE COURT: That is all forty-six?

MR. DRUKER: There are a couple of numbers which are not included, your Honor, I think 45, 40, 42 and 43, there are no exhibits for those numbers as yet.

THE COURT: You can continue.

(continued next page)

Q Mr. Christ, I'm going to show you another group of documents, and I will ask you to keep those in order, if you will, sir, and I will ask you do you recognize those and are you able to identify them as being the business records of the Nassau County Controller's Office or true copies thereof, ept and maintained by the office in the ordinary and usual course of business?

A Yes, they are.

Q And what are those documents, generally?

A These are claims made by the various vendors, and "vendor" being used in the sense it was used before, for payment of various county -- for reimbursement to themselves after paying money for various expenses. Actually, they are all of William Cahn's except the last two, and then that is Claire de Lune Travel.

Q And are you able to tell by looking at those claims whether or not checks were issued pursuant to the claims?

A Yes, there are warrant numbers on each of them, I checked them as I went through.

MR. DRUKER: I will ask that these be marked for identification, your Honor.

THE COURT: All right, mark them.

MR. DRUKER: These are Government's Exhibits 47-54, respectively.

THE CLERK: So marked.

BY MR. DRUKER:

Q Mr. Christ, it might be easier, I'm going to show you a substantial group of documents -- it might be easier if you might come down here?

THE COURT: Have you looked at them before?

THE WITNESS: Yes, I have.

THE COURT: Bring them up here, then, Mr. Druker.

MR. DRUKER: If the Court doesn't mind --

(At this point Mr. Druker lifted a substantial group of documents and placed them before the witness.)

THE COURT: Do you have to bring them all at once?

MR. DRUKER: Your Honor, I will ask that these be marked as a group.

BY MR. DRUKER:

Q Mr. Christ, are you familiar with those documents which are now before you?

A I have examined the documents, and they are all documents bearing a perforated stamp of the Comptroller and also a warrant number indicating the payment, and at one point we did furnish to the Government all the records that we had on these set of papers.

Q Are these similar to the other documents, that is, are they claims by the District Attorney's office which were ordered here by your office?

A Yes, sir.

Q And kept or maintained -- are they records kept or maintained in the ordinary and usual course of business?

A Yes, they are.

MR. DRUKER: I ask that they be marked as a group of Government's Exhibit 55 for identification.

THE COURT: Mark them for identification. See how many of them we actually need.

THE CLERK: So marked as Government's Exhibit 55 for identification.

BY MR. DRUKER:

Q And finally, Mr. Christ, I will show you these two groups of documents, and I will ask you to examine them and to tell the jury whether or not those are similarly business records of the Comptroller's Office, kept and maintained in the ordinary course and usual business?

THE COURT: There are some numbers on these, suppose we get these numbers.

MR. DRUKER: Those documents relate to the present matter, your Honor, and I will ask that they be marked as 56 and 57 for identification, respectively.

THE COURT: All right.

THE CLERK: Two sets of documents marked as Government's Exhibits 56 and 57 for identification.

THE COURT: Very well.

A Yes, they are also documents that were held in the regular course of business.

Q And were checks issued pursuant to these claims by the county?

A Yes, they were.

Q Now, Mr. Christ, with regard to any of these documents, in so far as they relate to travel expenses, did the defendant William Cahn ever tell you or anybody else in your office, for that matter, that he was submitting claims to other entities or other organizations for some or all of the same expenses covered in these county claims -- and I should limit that question to prior to November 1974?

A No, he did not tell me.

Q Did he ever ask your permission prior to November 197[illegible] to do so?

A No.

Q In other words, to be paid by the county on claims when some other organization was paying some or all of the same travel expenses as is contained in those documents?

A No, he did not.

Q Now, prior to November 1974, did you have any idea that the defendant might be submitting claims to other organizations for some or all of the travel expenses for which he was seeking and receiving payment from Nassau County?

A No, I did not.

MR. DRUKER: Your Honor, may I make an offer of proof at the sidebar at this time?

THE COURT: All right.

(The following occurred at sidebar without the hearing of the jury.)

MR. DRUKER: Your Honor, at some juncture, I would like to ask the witness what he would have done with these with regard to authorizing payment on any of these claims had he known that any of these claims the defendant was seeking or receiving payment for the same items from outside sources?

THE COURT: Did you ask that last time?

MR. DRUKER: Yes.

Your Honor, I have substantial doubt now as to whether or not it is actually relevant, what he personally would have done, and that is why I am bringing it to your attention

THE COURT: If you are questioning whether it is relevant, why do you wish to put the question?

MR. DRUKER: Because this is something that I think is going to have to be uniform, some of the witnesses' answers will be favorable, and some will be unfavorable in that regard, and if these questions are going to be allowed, I would just as soon take advantage of the favorable ones while I have the opportunity.

THE COURT: Have you any question on it?, Mr. Cahn?

MR. CAHN: Your Honor, I don't think it is actually incumbent upon me now to -- well, yes, I believe it is --

THE COURT: Unless there is objection, I will allow the question.

MR. CAHN: I am going to object to the question.

THE COURT: What is your theory of the objection?

MR. CAHN: On the theory that what he would have done as County Comptroller was based on opinion of his and in no way reflects the law or the policy of Nassau County, and knowing there is no foundation as to the fact that I would have had knowledge, that is, that I would have had knowledge as to what he would have done, I will object to it.

THE COURT: I think it has bearing on materiality.

MR. CAHN: Further, on the further ground, your Honor, that there is no count in this indictment that alleges fraud on Nassau County, and that there is nothing in it that they would have paid or should not have paid, so what he would have done is totally irrelevant to this new indictment as charged. Maybe it was to the old indictment, but not to this one.

MR. DRUKER: I will buy that latter argument.

THE COURT: You are not going to press that?

MR. DRUKER: Yes.

THE COURT: You are not going to?

MR. DRUKER: Not with this witness, your Honor.

THE COURT: All right.

(The trial then proceeded within the hearing of the jury.)

MR. DRUKER: I have no further questions.

THE COURT: You have a number of exhibits that are in only for identification.

Are you going to leave them that way?

MR. DRUKER: Yes, your Honor, I have just 1 through 46, they are the only ones offered into evidence.

THE COURT: Yes.

Did you mark those, Mr Giokas?

THE CLERK: Yes, sir.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Christ, we were discussing on the voir dire the two claims for the one particular trip?

A I think that was number two, Mr. Cahn.

(Continued next page)

Cahn 1
5/3pm
FC:cp 2

Q Looking at People's Exhibit 1 in evidence, there is a claim, is there not, for a trip to Chicago and San Francisco in the amount of four hundred, twenty-seven dollars and ninety-two cents, is there not?

A Yes, there is.

Q On that same claim form is a stamp, highly confidential, not for public inspection, case pending, is there not?

A Yes, sir.

Q Now, in this group of claim vouchers submitted as People's Exhibit of Government's Exhibit 1, is a claim with nothing but the date and highly confidential, not for public inspection, case pending, in the same amount of four hundred, twenty-seven dollars, ninety-two cents?

A Yes, sir.

Q And I believe you told the jury, did you not, Mr. Christ, that this procedure, one with blank and one with specifications, came about as a result of your concern about the confidentiality of the particular trip being maintained?

A Yes, I came to you and we had a conversation just about that, a special conversation.

Q Would you tell the Court and jury what that conversation was, please?

A Basically, I -- when you had sent a letter

indicating that various claims were confidential and I felt that our office was probably compromising that confidentiality to some extent in the course of the routing of that claim through the office.

MR. DRUKER: Can we have a date on that, please?

A I think the conversation probably took place sometime at about August of 1974, but I could not -- about that time.

Q May I suggest it was earlier than that?

A I do not want to be held to the month, but it was probably in 1974, and I think it was sometime -- I would welcome you to refresh my recollection because you and I had the conversation, but the best of my recollection today was around August 1974.

Q In any event, Mr. Christ, that was because of your concern about the confidentiality of the trip and everything involved being compromised in your office?

A Correct.

Q I don't hear you, sir.

A That is right.

Q Now, then, what was done with the two claims?

A The claim would be received at the mail desk and then the detailed information that would be audited in the claims section would be audited either by Vincent Federico

who was head of that section or Marge Gordon, and when she or he were satisfied that the claim had sufficient back-up, that the extensions and deletions were correct, then the first, the cover sheet that did not contain the details about where the trip had gone and so forth, that then was processed through our office which meant it had to go to the accounting section for coding, and it then went to the keypunch section for entry into the books and records of the accounting, and then it came back for re-entry in the books to evidence the fact that the claim has been in fact paid. So, a claim receives many handlings in our office so that, touching on now to a slip of paper that did not show where the trip went.

Q In other words, if I may, paraphrasing you, Mr. Christ, every precaution was taken by your office to maintain the security of the confidentiality of the trip itself for which there was a claim form?

A That is right. When we were asked, it was told it was confidential.

Q And this was so even though the claim form with the specific expenses on it also had the same stamp?

A That is right.

Q And the claim form which was blank except for the stamp and the date and the signatures, that was the one that was processed for auditing, is that right?

A Not for auditing, for routing through our office after it was audited.

Q Therefore, by this process, the number of persons who actually saw this particular form with the specifications on it was kept to an absolute minimum?

A That is right.

Q And, again, that was for the purpose of security?

A That is right.

Q And, in turn, may I suggest, this was to avoid possible leaks?

A Well, it was just to give a confidentiality that you requested.

Q Would it not avoid leaks from either your office or mine or the District Attorney?

A I guess so, yes.

Q Well --

A Yes.

Q Is there any doubt in your mind?

A Well, I do not know.

Q Is there any doubt in your mind, Mr. Christ, that this procedure would cut down the possibility of leaks either from your office or the District Attorney's office?

A I would compromise the confidentiality. The

word "leak," I get a little, -- I don't quite understand.

Q Leak, somebody from your office telling somebody on the outside or the possibility of somebody coming into your office and seeing a claim that was marked Confidential, but was, for some reason, out in the open.

A I would prefer to say compromise its confidentiality. Is that acceptable?

Q With all respect to your choice of rhetoric, Mr. Christ, would it under the vernacular prevent leaks from your office or from mine?

A Well, I guess so, sure.

Q Now, you do not know, do you, Mr. Christ, whether the signatures on these claim forms are mine or somebody else's? They purport to be mine.

A Yes. And they would have been accepted. That is one of the audit procedures. We have people who are authorized to sign. We have their signatures in our office, and, as one of the procedures in the audit, that signature is examined for authenticity, but that would have been done in the pre-audit level. I don't know personally.

Q Now, you told the jury on direct examination, Mr. Christ, that claim forms made out in the name of the Prosecution Fund were reimbursements to the Prosecution Fund?

A That is right.

Q And you said that claim forms made out in the name of William Cahn would be payments made directly to me?

A That is right.

Q But could you tell, Mr. Christ, whether or not the claim form in question, whether made out in the name of William Cahn or the Prosecution Fund, did not, in fact, represent a prior withdrawal or a check from the Prosecution Fund?

A Well, if it was a payment made to William Cahn it would not represent a withdrawal from the Prosecution Fund. It would be a payment to William Cahn.

Q Correct, and may I suggest to you that if I had taken an advance from the Prosecution Fund and made out a claim to the County Controller in the name of William Cahn and when the check was received and redeposited it in the Prosecution Fund, you wouldn't know that one way or the other and there would be no -- well, answer that question.

A No, I wouldn't know that.

Q And there would be --

A Except on the audit after the fact.

Q That is right. And there would be no violation of the procedures of the comptroller had it been done that way? You understand my question, Mr. Christ?

A Yes, I understand your question. We would have

allowed that procedure, that is, to have a payment made to you and then in turn you would reimburse the Prosecution Fund.

Q It is a proper county procedure, is it not, and a proper county experience for the District Attorney to draw a check on the Prosecution Fund for an intended trip in reference to county business, is it not?

A We have allowed that. It represents an advance, that we don't like to pay, but we have allowed it.

Q And if it involved district attorney investigations, is there any question that it was a proper county procedure?

A We have allowed it, Mr. Cahn.

Q Would it be permitted under the procedures of the county to withdraw funds from the Prosecution Fund to take a trip that was not related to county business?

A No, you could not do that.

Q I am having difficulty hearing you.

A You couldn't do that. I will try to keep my voice up for you.

Q May I ask you this? Let us for the sake of this particular question talk of People's Exhibit No. 46 in evidence representing a trip to Las Vegas and I ask you specifically, Mr. Christ, in what name was the claim made out?

A Prosecution Fund.

Q And the payment by the -- and, by the way, it is not the controller that sends the check, is that true?

A No, the controller only authorizes the payments. The check comes from the treasurer.

Q And who is the treasurer of Nassau County?

A John Sicuda.

Q When that check from the treasurer comes to the District Attorney after submission of that claim, it indicates that the comptroller approved the payment of that claim, does it not?

A Well, it wouldn't be issued if the controller had not approved it, yes, but whether the check itself -- I am not sure whether the warrant number is shown on that or not. If you put the question to me, certainly there is no check issued without a comptroller's warrant which means he approved the payment.

Q From that claim, could you tell whether or not there was an advance from the Prosecution Fund?

A No, I cannot.

Q Well, you told us now that when there was a claim made in the name of the Prosecution Fund and the check was issued, it would indicate reimbursement of the Prosecution Fund?

A Yes, but I would not know whether in fact there

had been an advance out of the Prosecution Fund or whether in fact there was a payment contemplated to be made out of the Prosecution Fund.

Q Yes, I understand. In other words, that the check might have come about after the check was put into the Prosecution Fund.

A That is right. You may have issued a check after we paid you, I am not sure what your procedure was on that.

Q Now, let me ask you, had there been an advance drawn from the Prosecution Fund for this trip which was not as yet made and on the return from the trip a claim was submitted to you as controller without listing the specifications by just listing advance to the Prosecution Fund, was it proper county procedure to pay that claim?

A No, we would not have paid it that way.

Q It was necessary then to list the specific use of the money claimed, is that right?

A That is right.

Q Now, Mr. Christ, you were asked by Mr. Druker whether or not the District Attorney had ever stated to you that a claim for the same expenses as are listed on People's Exhibit 1-46, were being submitted to any other organization, is that right?

A Well, it was in connection with a conversation that you and I may have had.

Q Mr. Druker on direct examination in the courtroom here asked you whether or not prior to November of 1974 or thereabouts the District Attorney had ever informed you that with reference to claims 1-46 he had submitted claims to any other organization for a payment of these expenses?

A Mr. Cahn, I think the question was, did he tell me, did the District Attorney tell me, you are submitting and my answer to that was no, he did not tell me that he was submitting any claims for any other. I do not know whether in fact there was any submission. But I think the question was, did he tell me.

Q Now, as comptroller of Nassau County, do you know whether there's any law of statute that would prohibit the filing of such claims with the county and the filing of such other claims?

MR. DRUKER: I object to this for the same reason that Mr. Cahn objected to it when I made an offer at sidebar.

THE COURT: We may get to your offer.

Mr. Christ being a lawyer I presume can give an answer to it. I will overrule the objection.

A It is my view of it --

Q No.

THE COURT: You are asking his legal opinion.

You are asking if there is any rule or statute

Q No, I did not say rule, statute, or law.

THE COURT: Law is a broad term.

Q Which specifically prohibits the filing of a claim with the county and the filing of a claim for the same expenses with another organization, a law or statute which specifically prohibits it?

A I think the general state law, Mr. Cahn, does not permit a double payment when it defines reimbursement to be made only against actual and necessary expenses. And it is my view that if a person in county employ bills two people; that is, two people for the same thing, that the certification of necessity cannot be made.

Q I understand that is your view, that when interpreting actual and necessary, that necessary no longer applies if there are two separate bills, I understand that. I ask you again, is there any law which specifically prohibits the filing of the claim against the county for expenses and the claim against the association?

A Mr. Cahn, I know of no state or county law that specifically calls out and says that a municipal employee is prohibited from getting it twice.

Q That is exactly my question.

A I know of no such law.

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Q Is it not true, Mr. Christ, that when the District Attorney goes on a trip he is giving wide latitude in so far as that particular trip is concerned?

MR. DRUKER: With what regard?

THE COURT: I will let him answer.

A I do not frankly understand the question.

Q Well, the length of the trip where he goes?

A Well, he has broad power to decide what it is the public interest, if that is what you mean, yes.

Q Now, with reference to People's Exhibit 1-46, Mr. Christ, did you cause an investigation to be made in your office for the purpose of determining whether so-called dual billings or other expenses were made?

A Yes, I did.

Q And, Mr. Christ, if a claim voucher is submitted to the county for a particular trip and during the course of that particular trip, and let us specifically refer to the District Attorney, part of that, part of the expenses are paid for by another organization and he returns that to the county, that portion of the monies received from the other organization, is that a proper procedure of the county?

A Yes, as long as he did not get in any instance more than one hundred cents on the dollar for his reimbursement it would seem to me that would be a proper procedure.

Q If the District Attorney were to travel to Albany on state business that had nothing to do with the county and in the course of that trip he purchases through his county gas credit card, for the sake of discussion, say, twelve and a half dollars worth of gas and the county pays the bill, when the credit statement comes in of twelve and a half dollars, thereafter the District Attorney receives payment from the state for the entire trip and he reimburses the county twelve and a half dollars, isn't that a perfectly proper procedure?

A Well, as far as companion municipalities are concerned, it is our procedure and practice in the county and it is the state's procedure, that they and we will not reimburse another municipal official for his actual and necessary expenses so in your analogy we would not, in fact, you would not get your money from the state because they will not reimburse you. You have to look to the municipality that employs you. Your analogy to that extent -- I understand what you are saying -- and if it was permissible and possible, yes, we would expect that reimbursement to the county fund. I am sorry to make such a long answer out of it.

Q I understand, and I am sorry I complicated it with the use of New York State.

Let us talk about a private organization in Albany. And

during the course of the trip, the other facts are just as I related them to you, county credit card was used for twelve and a half dollars worth of gas and when the entire trip was paid, the twelve and a half dollars was returned to the county.

A We would expect to receive that money back.

Q You would expect it, isn't that correct?

A That is right.

Q By the way, with reference to claim #46, if you will, do you know whether or not such a procedure was followed in that particular case?

A I do not know whether it was or not. I don't know what the reimbursements have been in many that you define in your example. Reimbursements are deposited with the treasurer and then in turn we get a notice of it to enter it in the books.

Q So you wouldn't know whether the county was reimbursed in cash in Count #46?

A No, I wouldn't.

Q 45?

A No, none of them.

Q None of them, 45?

A I could find out, but I do not know, the checks do not come to us.

Q By the way, in this investigation which you conducted, did you make an effort to determine whether any reimbursements were made?

A No, to my knowledge, we didn't. We did ask you, however, about the fact in this investigation and that only it came generally, to answer your question, to Mr. Dorosk in my office at my direction.

Q Now, Mr. Christ, in your investigation, that is, in the investigation which was made at your direction, could you tell us approximately in reference to the trips which you were investigation, approximately how much was involved?

A Well, the affadavit --

Q No, from your investigation.

A You mean the dollar amount?

Q Yes.

MR. DRUKER: I am going to object to this as being totally irrelevant. If Mr. Cahn wants to press it, I will ask for a sidebar.

THE COURT: No, I will let him answer it if he can.

MR. DRUKER: It really goes to matters other than what has come in here.

THE COURT: I am not sure. Tell me how much you are investigating about.

THE WITNESS: We will investigating about all charges that there were dual payments made, and we did not fix any dollar limit on it. As the final figure indicated, there was an amount of approximately $19,750 that appeared to be involved.

Q $19,750?

A That is right.

Q May I ask you again if the District Attorney went on a trip for the county and he also submitted a claim voucher for the expenses incurred while on that trip and while on the trip he performed services for another organization and received money, received a check from that other organization, would you or would you not consider that check county funds?

MR. DRUKER: Objection.

THE COURT: Overruled.

A I would not really try to earmark whose funds were whose.

Q No, I did not ask you whose funds were whose. Would you not say -- I will withdraw the question and rephrase it.

Mr. Christ, when the check was given by this other organization, did you not testify that you would expect repayment of that money to the county?

A That is right.

Q And therefore may I suggest that you believe that money belonged to the county?

A Well, you can say that.

Q Well, no, I am asking you, Mr. Christ.

A Well, I mean, if in fact a county official received payment twice for the same thing, at some point either he has got to pay the outside agency's money back to the county or the money we paid him through the claim form of the county. I do not much care as long as we get the check in the bank.

Q As long as you get the check in the bank?

A That is, the county is reimbursed to the extent of the money reimbursed to this official.

Q And as the District Attorney of Nassau County, would you not say, and as Controller of Nassau County, that the obligation was to repay the county?

A Oh, I think so, yes.

Q Therefore, if the obligation was to repay the county, I submit to you, again, Mr. Christ, that the money received from the other organizations belong to the county.

MR. DRUKER: I object to that.

THE COURT: I will sustain the objection. You are asking an issue of law.

MR. CAHN: I am asking the question in his

position as comptroller, your Honor.

THE COURT: Objection sustained.

Q In so far as county claims are concerned, 1-46, is there a policy in the county that the county not pay or reimburse for alcoholic beverages?

A That is right.

Q That is well known, is it not?

A Well, it is actually in a set of rules that we have at the present time.

Q Let us not talk about the present time.

THE COURT: Was it in 1974?

THE WITNESS: Well, I think it was not written -- not as clear when I first became controller as it is today.

Q In other words, are you telling us --

A We wouldn't pay it.

Q Are you telling me the rules have been changed?

A No, I think we have really just codified what the state law is about necessity and we would judge the consumption or payment for alcoholic beverages as not being necessary as a general rule, although, on occasion we do under certain circumstances.

(Continued next page)

Q So, ordinarily, if a claim in the name of William Cahn had been scotch and sodas, the county would not pay it.

A I would disallow that.

Q Isn't it a fact, well, let me put it this way, you said under circumstances that policy is changed.

A It is not changed.

Q It is dispensed with?

A It always remained the same. If you have certain confidential investigations like a detective goes in on a narcotics or some sort of morals thing and has a drink at a saloon, so he does not blow his cover, we will pay that amount of money.

Q Even though the claim says three scotch and sodas, Detective Jones, three scotch and sodas, you will pay it as long as we certify it is involved in an investigation?

A And it was necessary in that investigation.

Q And it was necessary, right? And, therefore, Mr. Christ, is it not so that in certain instances in order to protect an investigation, perhaps in order to protect the individual detective who was on the investigation, therefore, exceptions are made to the rules?

A Well, I have given you one of them. We try not to make too many, though.

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Q I fully understand that.

A There is a broader latitude, Mr. Cahn, when it comes to reimbursement of police officers and district attorney personnel when it comes to a confidential investigation and in the work of their office to rout out crime. We give a broader latitude to those than a public official that is merely being reimbursed for his meals when he is away from the county. We are not going to pay for his three scotch and sodas if he is just drinking at a convention. That is not our policy, and we do not think it is necessary.

Q But where it is involved with an investigation and where it is involved with the importance or the necessity of the investigation, the county does make an exception to its policy and rules, and it does pay the amount?

MR. DRUKER: Objection, repetitious.

THE COURT: Sustained. I think it is a summary of the testimony.

Mr. Druker, is there any redirect?

MR. DRUKER: May I have a moment, your Honor?

THE COURT: Just a moment.

CROSS-EXAMINATION

BY MR. CAHN (CONTINUED):

Q One of the uses of the Prosecution Fund, Mr. Christ, as you know it, is the payment of funds to an

informant?

A That is right.

Q And in so far as your investigation to which we referred, the so-called dual billings which you referred to, totalling approximately $19,750, you submitted a report in so far as that was concerned?

A Yes, I did.

Q And, did you not state that the $19,750 --

MR. DRUKER: I am going to object to this.

THE COURT: Let us hear the question.

MR. DRUKER: Your Honor, may I ask for a sidebar, I know what is coming and I submit it is improper.

MR. CAHN: Well, you are a better man than I am, Mr. Druker.

THE COURT: All right.

(A sidebar was held without the hearing of the jury as follow:)

THE COURT: Finish the question, please.

MR. CAHN: Would you read the first part of the question?

(The reporter read the question.)

MR. CAHN: Was a proper county expense.

MR. DRUKER: Your Honor, the report came about as a result of Mr. Christ's investigating allegations

Mr. Cahn was double billing them. This, I submit, is bootstrapping and self-serving. Mr. Cahn supplied Mr. Christ with the explanation he had been using the proceeds in the double billings to pay an informant. Mr. Christ reports in essence while an informant would be a proper county expense, if there was an informant, however, it should have been labelled as such in his claim. This is an indirect method to get the Sam Houston evidence in through the report, which reads back only what Mr. Cahn told to Mr. Christ.

MR. CAHN: I am sorry, your Honor, the investigation was conducted by Mr. Christ's office. They did whatever investigation that they had to do, including questioning me, on the basis of determining whether or not dual payments --

THE COURT: Where is the report?

MR. CAHN: I have it.

THE COURT: Let us take our recess, and I will take a look at it.

(The sidebar was concluded.)

THE COURT: We will take our afternoon recess now. The jury may go back to the jury room and do not talk about the case.

THE COURT: Is it where I can look at it?

MR. CAHN: I am trying to find it.

THE COURT: Mr. Druker, do you have it?

MR. DRUKER: Yes, I do. This is it, your Honor.

Your Honor, may I ask the witness not discuss this with anyone during the recess?

THE COURT: Well, he is allowed to. He is subject to questioning on it.

(A recess was taken.)

THE COURT: Mr. Cahn, if you are going to ask that question I think it has to be in terms of the statements in the report and not in some different paraphrase.

MR. CAHN: I will be very happy to, your Honor.

MR. DRUKER: The problem I have with that still is that this is based upon Mr. Christ's acceptance of Mr. Cahn's representations as being truthful. It is a bootstrapping thing.

THE COURT: It is not a bootstrap, it is a hypothesis which depends on what Mr. Cahn ultimately establishes.

MR. DRUKER: Again, I think it is something that is going to be brought, and it should be brought out on the defense.

THE COURT: Well, I think we have gotten far

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enough with Mr. Christ.

MR. DRUKER: We have not gotten into the Same Houston business, and I would like to keep the Government case free from this.

THE COURT: We have not got into the loss of the attache case either which Mr. Cahn did not describe to the jury.

MR. DRUKER: That is part of Sam Houston --

THE COURT: But I will let him ask this one question.

MR. CAHN: Your Honor, may I bring to your Honor's attention the fact that this, too, is a record kept in the regular course of the comptroller's business?

THE COURT: That does not make it admissible.

MR. CAHN: I understand that, but it does relate to these claims, your Honor, this particular information, and it was the Government who brought out the question through Mr. Christ of dual reimbursements.

THE COURT: If you want to argue yourself out of my ruling, you can, go ahead, otherwise, ask the one question.

Bring in the jury.

(Whereupon, the jury took its place in the jury

box.)

THE COURT: Go ahead, Mr. Cahn.

BY MR. CAHN:

Q I withdraw the form of the last question, your Honor, and I will ask Mr. Christ, you did conduct, your office did conduct an investigation into this so-called dual billings?

A Yes, we did.

Q And did you not come to the following opinion:

"As discussed above, Mr. Cahn has acknowledged that he has made claim to and received payment from both Nassau County and other entities for the same expenses and our examination confirms this in several cases. From the information provided us we are of the opinion that payments of this nature made to an informant are proper county charges and that if they were to be submitted to this office in the customary manner would be approved by us for payment. This office does not concur, however, that deviations from the prescribed claims audit procedure are acceptable."

Was that not your opinion?

A That is right.

MR. CAHN: No further questions.

THE COURT: Mr. Druker, do you have any redirect?

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Christ, with regard to that conclusion, is it fair to say what you are saying there if Mr. Cahn used certain monies to pay an informant it could be construed as a proper county expense?

A That is right.

Q Now, do you know for a fact, that he was paying an informant at any period of time?

A Just what he attested to me to be the facts.

Q With regard to the $19,750 figure, was that derived from information supplied by Mr. Cahn or somebody else?

A From Mr. Cahn.

Q Does it purport to say that if Mr. Cahn took money improperly from another source and used to pay for a county informant, that would be a proper county account or expenditure of money?

MR. CAHN: Objection. It is leading and not based in any way on fact.

THE COURT: Overruled. I think it is proper in the light of the conclusion that was stated

A Well, Mr. Druker, the monies that Mr. Cahn received from other entities were in fact duplicate payments and then they were applied to this informant and basically

that is what Mr. Cahn's affadavit says, we would have accepted those as payment to informant and would have allowed those as a general county charge and maybe what it does really is short-circuit the step of a redeposit into the county and payment out with a claim form.

Q You are looking at it from the county point of view, is that right?

A That is true.

Q If a county official were to, as an example, steal money from a bank and --

MR. CAHN: Objection.

MR. DRUKER: I did not finish the question.

Q -- and pay the county informant --

THE COURT: Overruled.

Q -- you would be looking at it simply from the county point of view, would you not?

MR. CAHN: May I object and call for a withdrawal of the juror by the use of the word "steal" which Mr. Druker in his very opening claimed that nowhere was I charged with larceny or stealing.

THE COURT: Overruled.

MR. DRUKER: I am using a hypothetical --

THE COURT: Overruled. I think the jury will understand the limits within which it is used.

A Could we have that question again?

Q If a county official, X, were to steal money from a bank and use it to pay a county expenditure for an informant, he would be saving the county, possibly, money, is that right?

A That is right.

Q That is your only concern, the dollar and cents of the county as controller, right?

MR. CAHN: Objection.

THE COURT: Overruled.

(Continued next page)

Q Is that right?

A Yes.

THE COURT: Of course, the jury will bear in mind there is no claim of theft here. This is just an illustration Mr. Druker is using.

Q Are you aware, Mr. Christ, the county of Nassau is not charged or alleged to be a victim in the present indictment upon which Mr. Cahn is tried?

A Mr. Druker, I have not examined the indictment, that is what I have been told.

Q You testified that sometime around August 1974 you and Mr. Cahn had a discussion regarding the confidentiality of the claims that he was submitting, is that right?

A Yes, I think that it was around August, it may be earlier in the summer, but I think it was probably after May and before August, I really can't fix a time unless I check our records as to when that stamp was first used.

Q This was during an election campaign, was it not?

A Mr. Cahn was running for office at the time.

Q And were there any outside entities who were seeking to examine these claims at that time?

A There are a number of people in the county of Nassau that are forever examining claims, and there were some

requests to examine the confidential claims of our office that were sealed by Mr. Cahn, yes.

Q Prior to the time that this switch took place where you stamped the front page, confidential, not for public inspection, were these claims which were typewritten as confidential, available to the general public for inspection?

A No, they were not.

Q And, with regard to payments to informants, this would be a permissible county expense, would it not?

A Oh, sure, we pay informants.

Q And, showing you again these two groups of documents marked Government Exhibit 56 and 57 for identification, I will ask you if those are not in fact all claims relating to the payment of informants by the district attorney?

MR. CAHN: Objection to the characterization.

THE COURT: Ask him what they are.

Q What are those, Mr. Christ? What do they purport to be, I should say?

A They are claim forms for reimbursement to the Prosecution Fund for payments to or for the benefit of informants.

Q Do those claims reveal the identity of the informants?

A Yes -- not in every instance, I do not believe.

Q In any event, do they give the informant's name?

A Here we go again. I think maybe there were some -- I guess not. Melvin Roth, but I think he was in the District Attorney's office. No, I do not see any names of informants.

Q Do any of them reveal the place at which the informant was paid?

A No, they are stated in very general terms.

Q Are those claims in proper form?

A Yes, they are.

Q To the best of your knowledge, were all honored by your office?

A Yes, they were.

Q Do you know whether or not checks was subsequently issued in payment of those claims?

A Yes, there were.

Q If the District Attorney took, for example, a five-hundred dollar cash advance for, say, a trip to Chicago in some point of in time that money would have to be repaid to the Prosecution Fund, would it not?

A Yes, it would.

Q And, would it be the general practice that he would submit a claim to the county listing the items for

which he expended that five hundred dollars or any portion of it?

MR. CAHN: Your Honor, again, I am going to object to the leading. I suggest that the question is what would be the general practice.

THE COURT: I think it is a proper way to do it. Let him answer.

THE WITNESS: What is that? Would he submit a claim of some sort listing or enumerating the items upon which he spent the five hundred dollars?

A Yes, he would.

Q And when a check was issued, would it be issued to him or the Prosecution Fund?

A Well, it would be issued to whoever expended the money, and the illustration that Mr. Cahn was talking to me about before, we would pay him and then in turn permit him to reimburse the fund. That is a variation on the way to do it.

Q If the airline tickets, for example, had been purchased through a travel agency and the claim came in the name of the travel agency, to whom would the check be issued?

A To the travel agency.

(Continued next page)

BY MR. DRUKER:

Q Now, if a claim says on it, for example, $200 for hotel bills, $100 for witness meals in Chicago, would you look behind it to determine whether or not that hotel had actually been used or whether or not the witness had actually been there?

A We couldn't go to Chicago or call them, but we would ask for a hotel receipt, a hotel bill, and the airline ticket.

Q Generally, as to those items where some items for which you would ask for a receipt; is that right?

A Right.

Q On those items, would you accept a District Attorney's or the District Attorney's -- that is, there might be a certification that they expended those monies?

A The thing that we are concerned about is the certification, that is, that the man is prepared to certify that the expenditures were actually and necessarily made. But if a man lost his receipt, his bill, we would still reimburse him if he was prepared to certify.

Q Now, you testified that prior to the issuance of that report, you had discussed those matters with Mr. Cahn; is that right?

A Yes, I, I discussed them and I had my field

auditor, Mr. Dorosk, discuss them.

Q And did Mr. Cahn at that time or at any time prior to December of 1974 tell you that he had in fact turned monies back into the county, for so-called double billings or whatever you want to call them?

A I don't recall any discussion about a turn-back into the county treasury --

Q Now, Mr. Cahn --

A That is, that is prior to November of 1974.

Q Now, to this date, do you know for a fact that he turned any of these, any of the monies from these alleged double billings, back into the county?

A I don't have any records of that. Our office may have the record, but the problem with trying when monies came back in is that those entries for redeposit are made on a daily basis and it is difficult, if it goes into the general fund, it is difficult to track those deposits unless you are looking for something like that and have some knowledge of when it was done. Otherwise, it would be hard to track it down.

Q Now, you testified also that your general policy was not to allow reimbursement for alcoholic beverages; is that correct?

A That is correct.

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Q For example, some county officials went out to lunch on county business, you might pay for the lunch; is that right?

A Food only.

Q And you wouldn't pay for alcoholic beverages?

A No, sir.

Q But on an investigation, if it was an undercover agent and to avoid blowing his cover, he had to buy a drink or two at the bar, you would pay for that?

A Under those circumstances, but if there were some investigation where the County Commissioner of Police is sitting around discussing it, he would be treat like an ordinary county official in the first instance that you gave and we wouldn't pay it.

Q It might have affected your decision to pay for the drinks if it were in an undercover investigation, but if you knew that some outside organization was also paying for those same drinks, and considering that in the light of the actual and necessary standard that you testified to, what would you do then?

A We wouldn't -- you mean if in fact the detective, his cover may be blown?

Q And he submitted a claim for three drinks at the bar to avoid blowing his cover and you also

knew that the National Police Association had already paid for those?

A We are only going to pay once, and that is it.

Q By the way, as to this actual and necessary standard, is that a policy or is that a statute?

A It is built into a number of statutes in the state law, really, I don't know the precise cite, I don't have it, but it is a standard by which we are guided, and that is the law of this state, to the best of my knowledge.

MR. DRUKER: No further questions.

THE COURT: Is there any recross?

RECROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Christ, you stated that the amounts were based upon what I have told you?

A Well, as far as the informant's payments are concerned, the $19,750, yes, sir.

Q And, on the information that I had given to you?

A Yes, that is correct.

Q Was it not also based on information that was received by County Chief Spahr and Joseph Spinnato?

A We didn't specifically to my knowledge interview them, although there were some affadavits that were presented

to us that indicated --

MR. DRUKER: I will object to the contents of this affadavit as being hearsay.

Mr. Christ has testified that he didn't interview them.

THE COURT: Sustained.

BY MR. CAHN:

Q Well, the information that you base your opinion on is based on affadavits as well as what I told to you?

A That is correct.

Q Your report was based on affadavits as well as what I told you?

A Yes, that is correct.

Q And weren't those affadavits signed indeed by Chief Spahr and Assistant District Attorney Joseph Spinnato?

MR. DRUKER: Your Honor, I --

THE COURT: I sustain an objection to that.

BY MR. CAHN:

Q Now, in the handling of funds from another association which were received in payment for expenses billed to the county, and those funds, used for accounting purposes directly, I think you characterized it as avoiding a short stop or a short step of redepositing it in the county treasury; is that correct?

A Yes, that is correct.

MR. CAHN: May I have the affadavits?

MR. DRUKER: I think this is what you want, it is 57.

MR. CAHN: Yes, yes, I am sorry.

BY MR. CAHN:

Q Now, you were shown Government's Exhibits 56 and 57 for identification and you identified them as claims for payments to informants; is that correct?

A That is correct.

Q And you stated that nowhere on those claims was there any indication of the name of the informant?

A That is the way they appeared to me, Mr. Cahn. There may be some, but from my quick look at it that is exactly so.

Q May I suggest that there is a date and a history, Prosecution Fund, Check #715, issued for expenses incurred by Informant #45, Re: Racket Bureau 640, and that is a District Attorney's Racket Bureau case, is it not?

A Well, those, those numbers, the RB and all the other numbers that were signed, were your numbers, and frankly what they relate to I wouldn't know.

Q And you wouldn't care?

A No, that wasn't designated that it meant anything

to us except that we had to do some filing by that sort of segregated claim.

Q That number represented a case, though, a county case?

A Well, I wouldn't know that specifically, that would be, that is your number and is assigned by you.

Q And the amount of a hundred dollars?

A Well, I don't know which one you are referring to.

Q We are referring to 56.

A It appears to be for a hundred dollars.

Q The first one.

And the second one is dated July 15, 1971, Prosecution Fund Check #719, issued for expenses incurred by Informant #45, Re: Racket Bureau 640, $100.

A Yes.

Q That is the only information on that claim form, is it not?

A Well, you have got certification and that sort of thing, but in terms of its descriptive quality, yes, that is all that it contains, and it appears that there is a series of those of one hundred dollars each and they run almost on a monthly basis.

Q All right.

Now, if the information therefore does not relate, that is, the name of the informant --

A No.

Q Nor does it have the place?

A No.

Q But it does relate a date, however?

A Right.

Q And you testified on redirect by Mr. Druker that that is a proper county form and was honored by the comptroller and a check was issued?

A That is correct.

Q Now, do you, Mr. Christ, know whether or not an informant was paid a hundred dollars?

A No, I don't.

Q May I suggest to you that if the District Attorney wanted to steal one hundred dollars he could submit that claim, pocket the money, and you wouldn't know anything about it?

A That is correct, he would have made an improper certification, but --

Q I said steal; is that correct?

A That is correct.

Q And he could pocket the money?

A That is correct.

Q That is all he would have to do is submit that claim?

A That is correct.

Q Now, you testified that this conversation about submitting blank forms with the stamp "Highly Confidential," came about in August of 1974 as a result of a conversation at that time?

A While there is no precision in that month, but it was in and around or between May and August, I would imagine, and I can check my records and diary on that and fix a more precise date, but that is to the best of my recollection.

Q You said that it came about during election time?

A I think I answered the question that he put to me, there were inquiries made about the confidential claims, you know, around the first part of the summer, really, and I think it was after that that we started to, I started to think about it and I talked to you about it, the way we were handling your confidential claim.

(Continued next page)

BY MR. CAHN:

Q Do I understand that you are telling this Court and jury that it was you who came to me?

A Yes, I came to you.

Q I didn't come to you?

MR. DRUKER: I think the last answer --

A This question.

THE COURT: Sustained, that is right, sustained.

BY MR. CAHN:

Q There was also a campaign for District Attorney in 1971; was there not?

A Yes, sir.

Q Who was asking for these claims in 1974?

A Well, the reporters from Newsday had inquired about these, Dr. Sorely asked about them, and ultimately Dennis Dillon asked about them.

Q Who is Dennis Dillon?

A He is now the District Attorney in Nassau County.

Q He was my opponent?

A Yes.

Q And do you know what his former position was?

MR. DRUKER: I'm going to object to this as being irrelevant.

THE COURT: Let him answer.

A He was --

MR. DRUKER: Your Honor, may I ask for a sidebar, I submit it is important.

THE COURT: Well, I think we are getting into something rather remote, but come to the sidebar.

(The following occurred at sidebar without the hearing of the jury.)

MR. DRUKER: Your Honor, at the last trial Mr. Cahn kept trying and continually tried to have Mr. Dillon's name brought in and that Mr. Dillon was Mr. Druker's boss and that this looked like a political ploy to get him. Now I think that is irrelevant, unless Mr. Cahn wants to argue --

MR. CAHN: I think it is perfectly relevant, your Honor.

THE COURT: What did Judge Dooling do last time?

MR. DRUKER: He tried to keep it out as best he could, but the defendant kept sliding it through the side through.

THE COURT: Well, it has no real relevancy, but my experience has then that if somebody thinks something is relevant and he wants something to come in, it comes in ultimately.

MR. DRUKER: Your Honor, I would ask the Court

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to reconsider it because in summation it is going to be argued that this was a political vendetta to get him.

THE COURT: Let him argue, you can't help that.

(The trial then proceeded within the hearing of the jury.)

THE COURT: All right, go ahead.

BY MR. CAHN:

Q Do you know the position which Mr. Dillon had prior to the time that he became elected as District Attorney?

A I think he was a federal attorney working, I think, in Anti-rackets.

Q May I suggest he was with the United States Task Force in this district, the Eastern District?

MR. DRUKER: If he knows.

Q Head of the United States Task Force in this district?

A I am not sure what his official title was, but I know in the racket section, I don't what the official title was.

Q Do you know whether or not Mr. Druker was associated with him at that time?

THE COURT: That is really entirely irrelevant, I directed --

MR. CAHN: Your Honor, I misunderstood you --

I thought --

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THE COURT: No.

MR. CAHN: Forgive me.

THE COURT: Objection sustained.

BY MR. CAHN:

Q Now, you talked about the state statute relating to expenses which were actual and necessary?

A Yes.

Q And am I not correct, Mr. Christ, in stating that the determination in the first instance of what is actual and necessary is the interpretation which the comptroller, the opinion that the comptroller may have had?

A Yes, that is a fair statement.

Q So, again, we are talking about an opinion as to what is actual and necessary and --

A Well --

Q If you make a determination that is something that is not actual or not necessary, it is your opinion, is it not?

A Well, I think that in the context of my testimony here this afternoon, when a person receives --

Q No, no, I'm not talking about any specifics, Mr. Christ, when you make a determination.

A Somebody has to judge it, and it is my

judgment, yes.

Q Yes?

A Right.

Q So it is your opinion, and that opinion can be challenged?

A Of course.

Q And there are others that might have a different opinion?

A I would hope not.

MR. DRUKER: Objection.

THE COURT: Overruled.

MR. DRUKER: Objection that it is pure conjecture.

THE COURT: I will let the answer stand.

You are on recross, you should direct your questions to redirect.

MR. CAHN: We talked about actual and necessary, your Honor.

BY MR. CAHN:

Q I ask you to look at People's Exhibit 2 in evidence and ask you, Mr. Christ, to read if you will to the jury what that claim was for?

A It is a trip to Chicago and San Francisco by District Attorney William Cahn, Assistant District Attorney

Joseph Spinnato, Detective Sargeant John Lang and RB 50-23 and SP-15, and then are various listed things that were expended, including meals, gratuities, taxis, hotels.

Q Now, if the defendant, the District Attorney, went to Chicago to lecture for the National College of District Attorneys and for that purpose alone, would the county have paid for that?

A No, we would not.

Q Now, specifically, do you know whether or not there was repayment to the county of any funds or any portion of Government's Exhibit 2?

A Mr. Cahn, are you referring to a cash payment?

Q Yes, a cash payment.

A I know of none, but there may have been.

I indicated to you before the difficulty of trying to trace a repayment back in.

MR. CAHN: May I ask that this marked for identification?

THE COURT: Mark it.

THE CLERK: One-page document marked as Defendant's Exhibit A, for identification.

BY MR. CAHN:

Q I show you Defendant's Exhibit A for identification and ask you if you recognize that?

A I have never seen it before, but it is --

Q Do you recognize what it is .

A Yes, it is a form for a redeposit.

Q To whom?

A To the Treasurer of the County of Nassau.

Q And does that form relate the dates and for what the redeposit is?

A Well, there is a description of what it is on the form.

It appears to have some official markings on the bottom of it that are deleted in terms of date and --

Q You mean deleted or --

A They are not distinguishable.

Q All faded?

A I see a 19, it looks like April, I do see a dollar figure --

MR. DRUKER: I am going to object at this point to any testimony from this document, which, number one, we don't know whether Mr. Christ is the proper party --

THE COURT: The witness hasn't identified it yet.

Do you have any more questions about it?

MR. CAHN: Well, I press the identification.

A This is a country treasury form and really -- I

don't see, you know, the official markings on it, and frankly this form would be better really t[illegible]tified to by the treasurer. I mean, not by -- that is their form, and we act by getting or receiving copies of it, but to make entries in the books, but that is his form.

Q Well, did you get a copy?

A As I see it here, Mr. Cahn, I don't know. I have been able to testify to these other documents that have been marked because they have our [illegible]fficial stamp on them, both for payment and also the perforation and as to the fact that we issued a warrant, but that I can't tell you.

Q The state law and the county law, if you will, to which you referred about the comptroller in determining whether or not expenses are actual and necessary, does that law relate or have a reference to or is relevant in any way to private groups?

A It controls the municipal offices, and it addresses itself to that.

MR. CAHN: No further questions.

MR. DRUKER: Nothing further, your Honor.

THE COURT: Mr. Christ, you spoke about your report having been based on affadavits.

Do you have the original affadavits or copies of the affadavits?

THE WITNESS: We -- there were affadavits that were submitted to me by the District Attorney that related to his payments to various -- to -- to an informant, and we used photocopies, xeroxed copies, of those in our report, and we made some comments about the absence of the originals.

THE COURT: Thank you. You may step down.

(Then the witness was excused.)

(Continued next page)

THE COURT: Your next witness.

MR. DRUKER: The Government calls Patrick Healy. He said he will be here in just a couple, your Honor.

THE COURT: Do you want to take these exhibits away, Mr. Druker?

MR. DRUKER: Yes, your Honor.

P A T R I C K H E A L Y, called as a witness on behalf of the Government, having been duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Healy, would you tell the jury the place and nature of your present employment?

A I am the Executive Director of the National District Attorneys Association with headquarters at 211 East Chicago Avenue, Chicago, Illinois.

Q And what is the National District Attorneys Association, and, first of all, how long have you been affiliated with it?

A I have been affiliated with the association since 1967.

Q And as the Executive Director for that entire period?

A For all but one year, and before that I was a

Project Director on one of their grants.

Q Will you tell the jury what the NDAA is, as it is referred to, what it does and goals?

A It is a national professional organization of prosecutors, both state and federal. The main function and purpose is to professionalize the office of the prosecuting attorney.

Q And do you know the defendant William Cahn who is seated to my right?

A Yes, I do.

Q Was he at any time affiliated with the National District Attorneys Association?

A Yes, he was.

Q For what period of time, to the best of your knowledge?

A For as long as I have been associated with the association, starting at least in '67.

Q At any time was he an officer of that organization?

A Yes, he was.

Q For what period of time and what office did he hold?

A Well, he has held the position of State Director from the State of New York, Vice-President, President-Elect,

President, Past President, possibly Secretary-Treasurer, I would have to go back and check the record.

Q He was President of the organization, you testified, for some time; is that right?

A Yes, sir.

Q Do you recall the period during which he was President?

A I believe he came in in '71 or '72 at the convention in Mackinaw.

Q Mackinaw, Michigan?

A Mackinaw, Michigan, and went out in August, the Puerto Rico conference.

Q The date August, would the August 1, 1971, to July 31, 1972, refresh your recollection?

A That would be Mackinaw, I think, so.

Q Now, by the way, was Mr. Cahn affiliated with various committees or did he chair various committees of the NDAA?

A Generally, yes, he chaired numerous committees.

Q And from time to time did he travel for the NDAA or pursuant to NDAA business to various cities around the country?

A At our request, yes.

Q To lecture and to perform other services; right?

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A Yes.

Q And was he entitled on any of these occasions to have his expenses paid by NDAA?

A As a rule, on authorized trips we picked up all the expenses, yes.

Q By all the expenses, you mean all travel expenses?

A Airline tickets, hotel bills, miscellaneous out-of-pocket expenses, yes.

Q Taxi cabs or car rentals?

A Yes.

Q Now, was there a general procedure that was followed with regard to Mr. Cahn's seeking and obtaining reimbursement from the NDAA for travel expense?

A On behalf of the association?

Q Yes.

A Normally, he would perform the assignment, he would write a letter stating that he had been where he had been, and that his out-of-pocket expenses were such-and-such a figure, and I would issue a check.

Q And these letters, would there be hand delivered or delivered by some other means, generally?

A Well, mostly by mail.

Q And then you would issue a check as a rule

pursuant to his claim or letter; is that correct?

A Right.

Q How would you deliver the check to him or cause it to be delivered?

A Well, mail it back to New York.

Q I'm going to show you these documents which are marked respectively Government's Exhibit 3(A) through 6(A) for identification and 11(A) through 27(A) for identification, and finally, 46 for identification, and I will ask you if you recognize those and can identify them as being business records of the NDAA and kept and maintained by the NDAA in the ordinary and usual course of its business?

A 4(A) is.

11(A) is.

12(A), 13(A), 14(A), 15(A), 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 -- 27(A), not 27 -- 46(A), and Exhibits 5(A), 6(A) and 3(A) are records normally kept in the course of business for the National Center for Prosecution Management.

Q All right.

And what is the National Center for Prosecution Management, if you know?

A Well, it is a D.C. corporation whose main function is to do management studies of prosecutor's offices throughout the country.

Q Do you have any affiliation with that organization, you, personally?

A Personally?

Q Yes.

A I am Secretary-Treasurer of it.

Q And those last three exhibits you mentioned, are these business records of that organization kept and maintained in its ordinary and usual course of business?

A Yes.

Q Did Mr. Cahn at any time have any affiliation with that entity?

A Yes, he did.

Q What was that and when was it?

A On the Board of Directors.

Q For what period of time, if you recall?

A I can't give you the exact dates, but for a while there it was not incorporated and then later it became incorporated.

Q And do you know what the Law Enforcement Assistance Administration is?

A Yes, I do.

Q What is it?

A It is a special agency of the Department of Justice set up to handle improvement grants to law enforcement

agencies by Congress.

Q Does the LEAA fund the National District Attorneys Association in any way?

A Yes, they give us grants, but they don't fund the organization, the association, as such.

Q Are any of these records related to LEAA-funded grants?

A Some of these do, yes.

Q How about the National Center for Prosecutor Management, how is that funded?

A That is funded solely by LEAA money.

Q Is there any relationship between the National District Attorneys Association and the National Center for Prosecutor Management?

A Well, informally, we consider it our management arm although it is a separate corporation.

Q Did Mr. Cahn travel from time to time on business for the National Center?

A As a board member, he would attend board members.

Q Now, generally, without going into any details at the moment, what are those documents there in front of you?

A Well, they are various letters and reimbursement request forms for various trips.

Q By whom?

A They are all by Bill.

Q By Bill you mean --

A Bill Cahn.

Q The defendant?

A Yes.

Q And also contained in there, are there any correspondence from you and the various associations to Mr. Cahn?

A You mean letters of acknowledgement?

Q Yes, sir.

A Just my original check, as far as I can see, along with the pink copy of the check which is the second copy of a snap-out check form. I don't see any letters that I have written personally, if that is what you mean.

Q Were those checks issued pursuant to the letters sent by Mr. Cahn or the claims sent by Mr. Cahn?

A Yes.

Q And to the best of your knowledge, are there any of those letters or claims which were not sent in United States mails?

A Through, through the United States mails, you mean hand-delivered?

Q Yes, sir.

A I don't recall any, no.

Q And to the best of your knowledge, are any of those checks checks that were not sent in the United States mail to Mr. Cahn?

A Not that I recall.

Q And did those letters and those checks relate to business or trips taken by Mr. Cahn on behalf of the National District Attorneys Association and the National Center?

A They are at our request either on association business or under grant business, yes, sir.

Q Regardless of whose request, do they relate to travel undertaken by Mr. Cahn on association business or center business?

A Yes.

MR. DRUKER: Your Honor, after showing these to Mr. Cahn, I am going to offer them into evidence.

THE COURT: Come to the sidebar a minute.

(The following occurred at sidebar without the hearing of the jury.)

THE COURT: The witness has said that some of these were LEAA and others were not.

Now, are you going to come to that? I am not sure all are admissible.

MR. DRUKER: They are related to the trips in the indictment, but I'm going to go into the dichotomy

between the non-LEAA fund and the LEAA funding.

THE COURT: All right. Then we will get there.

(The trial then proceeded within the hearing of the jury.)

THE COURT: Maybe while Mr. Cahn is examining them we will take our afternoon -- well, it is the end of the afternoon, it is past 4:30 now.

Bear in mind what I have said, ladies and gentlemen. Do not talk about the case amongst yourselves or with anybody else and don't talk about it at home.

Don't let anyone speak to you, any of the courtroom.

Now if you see any articles about it in any newspaper or notice anything on radio and television, don't listen at all.

I want no outside input.

You are excused until ten o'clock tomorrow morning.

You can step down, I'm sorry to keep you until tomorrow.

THE WITNESS: No problem, your Honor, no problem.

(At 4:45 p.m. the jury left the courtroom.)

MR. DRUKER: Your Honor, we can schedule things tentatively, will you at 4:30 be adjourningin the afternoon?

THE COURT: Well, sometime between four-thirty and five tomorrow because I have a sentencing panel.

MR. DRUKER: We will start at ten.

THE COURT: Starting at ten, that is, unless I try to rush a little bit.

I always have something to do in the morning, I have other cases.

MR. DRUKER: I wasn't try to rush the Court, I just wanted the record to indicate that at the time of the arraignment of the defendant, and I am not objecting to his looking at the documents, he is entitled to do that, but I just want to have this reflected on the record that at the time of arraignment Mr. Cahn was given copies of Government's 1-46, 1(A) through 46(A) and 1(B) through 46(B).

MR. CAHN: There's no question about that, your Honor.

THE COURT: Do you have any objection to that?

MR. CAHN: No, I don't think so.

THE COURT: We will mark them in the morning.

I let my clerk go because he has a meeting.

85 MR. CAHN: Obviously the case is going to move along --

THE COURT: I am not sure if we will finish in two days and a half.

MR. DRUKER: Your Honor, I think Thursday morning will be last witness the Government will have.

MR. CAHN: Well --

MR. DRUKER: If that is the answer you are looking for.

MR. CAHN: Well, in view of that, your Honor, because it is important in so far as the methodology of presentation is concerned, and perhaps even more important at this time, the expense, I would like to know and with an offer of proof, if your Honor is going to make a decision as to whether or not you will permit extrinsic evidence to come in on the basis of character testimony, and related strictly to the question of truthfulness as was done with Judge Dooling because --

THE COURT: Well, what questions would you anticipate putting at this stage to the character witnesses of Mr. Cahn, Mr. Druker?

MR. DRUKER: Your Honor, I am just giving you my mental processes, I thought this over a good deal since the last trial, I think under the law I would be entitled to ask them a number of questions as long as

86 they are based on good faith -- well, I just had a number of them, but I have decided not to go into them because I think the jury might think it just really wasn't cricket unless I was going to prove these things, so I don't know, I may stick pretty much to the limits that I stuck to on cross-examination last time, which was just more or less asking them if they knew anything or had any personal knowledge about the facts of this case, and not much else, and if that changes, I will bring it out.

THE COURT: Let Mr. Cahn know tomorrow morning.

MR. CAHN: I have no objection to asking, if I may make myself clear, I don't object to the Government asking the questions which would necessarily follow by a defendant taking the stand, but being bound by the answer, if it involves, supposedly, allegedly other crimes, but to permit extrinsic evidence to go in is an entirely different story, and this is one of the questions which --

THE COURT: So far Mr. Druker has not suggested that, and what I'm saying is that he ought to let us know if he wants to go beyond what he did at the last trial.

MR. CAHN: All right, fine, thank you.

THE COURT: Good afternoon.

86a MR. CAHN: Good afternoon.

MR. DRUKER: Good afternoon.

(The proceedings for the day were thus concluded.)

* * * * *

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I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Hallsted Christ	4	23A	49	60	13
Patrick Healy	74				

EXHIBITS

GOVERNMENT'S	DESCRIPTION	FOR I.D.	IN EV.
1-46	Files		16
47-54	Claims	17	
55	Set of documents	19	
56, 57	Sets of documents	20	
DEFENDANT'S			
A	One-page document	70	

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IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
MAY 13 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

WILLIAM CAHN, :

Defendant. :

----------x

75 CR 645

United States Courthouse
Brooklyn, New York

May 4, 1976
10:00 a.m.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and correct stenographic transcript of proceedings.

Official Court Reporter
U. S. District Court

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

9c

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
PETER GOLDMAN, ESQ.
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NEIL CAHN, ESQ.
and
HAROLD BOGIN, ESQ.
Attorneys for Defendant

- - -

(Whereupon, the jury entered the courtroom at 10:15 a.m.)

THE COURT: Good morning, ladies and gentlemen. We are ready now after a little preliminary matter.

Mr. Druker, you may proceed, and Mr. Healy, you were sworn yesterday and are still under oath.

MR. DRUKER: Seated at counsel table is Mr. Thomas Sclafani, the gentleman from yesterday.

Now, I believe we left off yesterday at the point where the Government had offered into evidence certain documents showing Mr. Healy, and it was my understanding that there is no objection.

MR. CAHN: That is correct, Mr. Druker.

MR. DRUKER: In that event, the Government offers into evidence Exhibit 4-A for Identification, 11-A through 16-A for Identification, 17-A through 27-A for Identification, and 46-A for Identification and also 5 and 6-A for Identification.

THE COURT: All right. They can be marked.

MR. CAHN: May I just check something, Mr. Druker. 17-A, was that testified to?

MR. DRUKER: Yes.

THE CLERK: So marked in evidence.

THE COURT: All right. Go ahead with your

questions, Mr. Druker.

P A T R I C K H E A L Y , resumed and testified further as follows:

DIRECT EXAMINATION

BY MR. DRUKER (Continued):

Q Now, Mr. Healy, those documents represent letters from Mr. Cahn to the National District Attorneys' Association or the National Center, do they not, among other things?

A Yes.

Q And with regard to those letters, what are they, generally?

A You mean the contents?

Q Yes, sir.

A Basically, letters stating that he had gone on a trip on our behalf, conducted whatever it was, a training course or a lecture, and that many times referred to what happened, and then a statement as to expenses and then reimbursement.

Q And, with regard to each of those, there was a pink invoice included or with most of them?

A Well, that is a copy of the check. The check comes in three parts.

Q You have an actual check included, right?

A Well, it is a file copy of the check.

Q What is the document which appears to be an invoice?

A Well, there is a form there which was designed for the claiming of reimbursement. Is that what you mean?

Q These pink --

A That is a copy of the check. The check comes in three parts. It is a stamp-out check.

Q Now, in each of these cases, to the best of your knowledge, did Mr. Cahn travel on either business for the National Center or for the National District Attorneys' Association?

A Yes.

Q And in each of those cases, you issued a check for reimbursement pursuant to his claim; is that correct?

A Yes.

Q In any of these instances, did Mr. Cahn tell you or anyone else in your organization, to your knowledge, that he had filed a claim with Nassau County, New York, for some or all of the same expenses for which he was seeking reimbursement from either the NDAA or the National Center?

A Not for what I was repaying him for, no.

Q Did he ever tell you that he was -- did he ever ask for your permission to do this?

A Ask me permission to do what?

Q To obtain payment from the NDAA or the National Center while simultaneously obtaining reimbursements for the expenses from this county?

A No.

Q By the way, is there any -- withdrawn.

Is there one or more than one type of funding which is used to pay the travel expenses that are reflected in these exhibits?

A Source of money?

Q Source of money, yes, sir.

A Well, there is a grant from LEAA, and then there is the general treasury of the Association which is not supported by money, Governmental grant.

Q And, was some or all of Mr. Cahn's travel taken pursuant to these LEAA grants?

A I would have to check each and every check, but I am --

Q You can tell by looking at those documents whether or not his travel was pursuant to a LEAA grant?

A Pretty much so, yes.

Q I am showing you now Government's Exhibit 3-A through 6-A in Evidence (handing to witness).

MR. CAHN: Mr. Druker, there may be a mix-up. I don't think you offered 3-A in Evidence.

MR. DRUKER: I am sorry. This was included in the package. I should have enumerated it.

MR. CAHN: I have no objection.

THE COURT: All right. Mark it.

MR. DRUKER: May the record reflect that 3-A was one of the exhibits which was introduced.

Q Starting with 3-A, can you describe, if you can, what the trip was about that that claim --

A 3-A?

Q And whether or not it was a LEAA funded project or pursuant to a LEAA grant?

A 3-A was. It was a Board of Directors' meeting of the Center held in Mexico City. This institution is wholly funded by LEAA.

Q And with regard to 4-A?

A 4-A, to the best of my ability, is the training seminar in San Francisco, which was funded with a LEAA grant.

Q And with regard to 5-A?

A This would have to be a Board meeting of the Center held in Chicago, which was, well, the same thing. It is funded by a LEAA grant. And you want 6-A?

Q Yes, sir.

A 6-A is likewise, an Executive Board meeting of the Center held in Los Angeles. That is LEAA funded.

Q And with regard to the checks that were issued in 4-A -- in 3-A through 6-A, I am sorry, were these checks that were drawn on LEAA funded or other accounts?

A No separate funding. It is LEAA.

Q The LEAA was used to pay those claims?

A Yes.

Q With regard to the National Center for Prosecution Management, what was Mr. Cahn's affiliation with that entity?

A Board of Directors.

Q And as such, was he aware, to your knowledge, was this entity LEAA funded?

MR. CAHN: If he knows.

A Well, I just assume he did.

MR. CAHN: Object to what he assumed.

THE COURT: Was the question of LEAA funding made known to the Board of Directors?

THE WITNESS: Oh, yes.

Q With regard to 4-A, which was the Drug Conference in San Francisco, was your testimony that that was a LEAA funded project?

A It was an LEAA project, but it is not a drug project.

Q And showing you again 4-A in Evidence, I will

ask you whether or not, to your knowledge, Mr. Cahn was aware that that trip involved a LEAA project?

A I just assume he did, yes.

MR. CAHN: Object to what he assumes.

THE COURT: Yes, strike it out.

Q What was his affiliation with the LEAA at that time?

A '71, President Elect or President.

Q Was he a Board member?

A Well, he would be a Board member of the NDAA.

Q Was the matter of LEAA discussed at Board meetings?

A Almost every Board meeting.

Q Was Mr. Cahn present at some or all of these Board meetings?

A Frequently, yes.

Q Now, did you have different fiscal policies regarding No. 1, the payment out of LEAA funds, and No. 2, payment of travel expenses out of general NDAA funds?

A Yes.

Q Were these policies written or oral?

A Both.

Q Now, with regard to payment of travel expenses out of regular NDAA funds, was there any written or oral

guideline which would either allow or prohibit an officer of the NDAA from obtaining reimbursement where his home jurisdiction was paying for those travel expenses?

A We have a By-law provision.

Q What is that By-law, if you know?

A I think it is No. 12.

Q For what period of time has that been in existence, to your knowledge?

A As long as I have been with the Association.

MR. DRUKER: May this be marked for Identification, your Honor?

THE COURT: Yes.

THE CLERK: Document marked Government's Exhibit 58 for Identification.

Q Mr. Healy, I am directing your attention to Government's 58 for Identification. I will ask you to tell the jury, first of all, is that a copy of the document which was kept and maintained by the NDAA in the ordinary and usual course of its business (handing to witness)?

A Yes.

Q What is it?

A Officers -- Directory of Officers and Board members in 1971.

Q In that Directory, do you find Article 12 or

Article 12 of the By-laws?

A Page 30, Article 12.

Q And is it your testimony that this By-law was in effect at least from 1969 through 1974?

A Best of my ability, I remember it being, yes.

Q In that same format, was it changed at all, to your knowledge?

A To my knowledge, it has never been changed.

MR. DRUKER: Your Honor, I will offer that portion of the document into evidence after showing it to counsel.

MR. CAHN: Which portion, Mr. Druker?

MR. DRUKER: Article 12, page 30.

MR. CAHN: The entire brochure was identified by the witness, and I believe it has relevance to the entire matter.

THE COURT: If you want the whole thing. Mark the whole thing. The Government can read Article 12. They don't have to read anything else, but it is available if Mr. Cahn wants to use it for any purpose.

THE CLERK: Government's 58 marked in Evidence.

MR. DRUKER: May I read the first paragraph of Article 12, your Honor?

THE COURT: Yes.

12 Healy-direct

MR. DRUKER: Article 12, Travel and other expenses. It shall be the policy of the corporation to minimize expenditures out of its general fund for traveling or other expenses incurred by officers or members relating to the Corporation's business. No reimbursement for any expenses shall be made to any officer or member where such officer or member can or may secure similar reimbursement from his governmental jurisdiction or any other similar source. The collection of reimbursement for the same expenses by an officer or member from both the corporation and any other source shall be grounds for automatic expulsion of membership from such officer or member."

Q Now, with regard to LEAA funds, were you governed by different policies or by-laws, if you know?

A There's financial guidelines which they give you.

Q Who gives you?

A LEAA.

Q And would those guidelines and policies as you or your organization understood them and interpreted them, either prohibit or allow the payment to an officer of the NDAA traveling pursuant to the LEAA grants where his local jurisdiction was paying the same item, travel expense?

MR. CAHN: Objection to the answer of the ques-

tion as to whether the defendant had knowledge from LEAA guidelines.

THE COURT: Yes. Don't ask it from looking at the guidelines yourself.

MR. CAHN: That the defendant knew; I knew.

MR. DRUKER: Your Honor --

THE COURT: Well, that is the next point. The witness can answer it.

A Well, in reading the guidelines we would not pay, no.

Q I am not asking whether or not you, personally, would pay. That was the interpretation of the guidelines. What was your interpretation of the guidelines? Did they allow or prohibit the payment of such expenses?

MR. CAHN: The matter becomes totally irrelevant if the --

THE COURT: Leave your argument for later, Mr. Cahn. I ruled that the witness may answer.

THE WITNESS: What would be my interpretation?

THE COURT: Yes.

THE WITNESS: I am sorry. Was that the question?

Q Yes.

A My interpretation, we would not pay.

Q In other words, it was prohibited by the policies

and guidelines of the LEAA?

A Yes.

(Continued on next page.)

BY MR. DRUKER:

Q Now, directing your attention again to Government's 46-A in evidence, that is a claim for among other things travel expenses incurred on a trip to Las Vegas, Nevada; is that right?

A Yes.

Q And was that pursuant to NBAA business?

A No. Not if it was the police prosecutor conference, it was not.

Q But it was paid by the NBAA?

A Yes.

Q Now, in this claim, Mr. Cahn requested reimbursement for a hotel room, for a claim incurred by him in Las Vegas?

A Yes.

Q In what amount?

A $100.

Q And did he ever tell you that the hotel room in Las Vegas had actually been rented to him on a complimentary basis or free of charge?

A Not that I recall.

Q Within the last month or so, did you have occasion to discuss with Mr. Cahn?

A I did.

Q Did he tell you whether or not the hotel room in Las Vegas had been complimentary?

A He did.

Q And what was his response in that regard?

A He asked me if I recall the conversation that he had with him.

Q Did he tell you whether or not the hotel room had been given to him free of charge in Las Vegas, Nevada?

A At that conversation he did.

Q What did he tell you in that regard?

A He said that he stayed at a different hotel and that he had gotten a complimentary room, and he asked me if I remembered a conversation I had had with him.

Q And did you remember any conversation with him prior to this?

A Concerning that room, and I said, to the best of my ability, and I do not remember it, but that wouldn't be unusual.

Q When did you have this conversation that you just referred to in which Mr. Cahn and you discussed this complimentary room?

A That was in Washington, but I'd have to check my calendar. That was in Washington about a week or ten days ago.

Q Was this a LEAA funded or a NBAA funded?

A This was a NBAA project in association with the National Association, Chiefs of Prison.

Q And to your knowledge, would the policies or guidelines of the NBAA, prohibit or allow the payment of a hotel bill where the hotel had actually given the room on a complimentary basis to Mr. Cahn or anyone else on that basis for that matter?

A We pick up all expenses. You are saying would we pay for a hotel room that didn't cost anything?

Q Yes, sir.

A Basically, not.

Q By the way, with regard to these exhibits which I have shown yo , did Mr. Cahn generally submit any sor' of back-up document such as receipts or hotel bills or statements?

A Whatever he submitted would be there, and sometimes there is, sometimes there isn't.

Q Is it fair to say that generally what he submitted was what is right here; just a listing of his expenses without any supporting documentation?

A Normally I pay out in the letter.

Q And do you rely on what is in his letter or do you check someplace else with the expenses actually incurred?

A The letter stands for itself.

Q Now, I show you a further group of documents and I will ask you to keep them in order, and to examine them and tell the jury whether you recognize those and can identify them as being business records of the NBAA kept and maintained in the ordinary and usual course of NBAA business (handing to witness.)?

A These are business records wit. our check attached to it. The first one is dated March 4th, 1969. It involves a conference in Indiannapolis, Indiana.

Q Without telling what each of those documents are, they are not in evidence, try to tell whether or not these are business records of the NBAA, kept and maintained as such?

A Yes. One to Boston is, reference to Reno is, Arizona is, one concerning New York is.

THE COURT: Let me have these, and I will check. Mark them.

MR. DRUKER: Your Honor, if I may, in pencil I will make some tentative numbering notations.

THE WITNESS: Well, they all have some. Do you want specific references?

THE COURT: Later. After they are marked.

THE WITNESS: Well, they all are.

Q What are those documents, generally?

A Well, there are some letters there. There are some checks, in each case there is a check, and in this case there is check stu[illegible]. It is letters, correspondence and concerning trips.

Q Trips by whom?

A Mr. Cahn.

Q Pursuant to NEAA business?

A Right.

Q Similar to t he exhibits which you have been shown previously; is that right?

A Yes.

MR. DRUKER: Your Honor, may I wait until he marks them.

THE COURT: Yes.

THE CLERK: Two documents marked 47-A, 47-B. Seven documents marked Government's 48-A through 54-A.

(So marked.)

Q Starting with 47-A and 47-B for identification, if you would, Mr. Healy, would you tell the jury what those specific documents are and what they relate to?

A 47-A is a training conference in Indiannapolis.

Q And are you able to tell whenthat training conference took place?

A It took place around February of '69.

MR. CAHN: Your Honor, there is nothing in the indictment which has anything to do with February of 1969.

THE COURT: Come to the side bar on this.

(Whereupon, a side bar was held as follows:)

THE COURT: Is this other similar acts.

MR. DRUKER: This is a prior similar act, your Honor, and I submit it has a high degree of relevance in light of the defendant's opening. This document will show that the defendant was double billing almost a year before he met the purported informant, that he telephones him, and to start double billing. That is the reason for this.

THE COURT: The issue of knowledge. It seems to me it is admissible.

MR. CAHN: I haven't seen these at all.

MR. DRUKER: I haven't offered them.

MR. NEIL CAHN: But there are statements of what they are and what they say, your Honor.

MR. CAHN: Prior to the time, if they are not double bills, your Honor, the testimony of Mr. Healy would indeed be highly prejudicial if they are not double billed.

MR. DRUKER: The Government would certainly look like fools.

MR. CAHN: I don't care what the Government looks like. I am concerned with what the defendant looks like.

T THE COURT: I will let the Government go one step at a time. Objection overruled.

(Whereupon, the side bar was concluded.)

THE COURT: Just let me tell the jury that when I admit things that took place before the acts of the indictment, they are not for the purpose of adding anything to the crime charged against Mr. Cahn. They are similar for the bearing that the Government may show they may have, on his original motive and other circumstances incidents for the matters charged in the indictment.

MR. DRUKER: Thank you, your Honor.

BY MR. DRUKER:

Q Mr. Healy, from looking at those two documents, 47-A and B, can you fix the time period that this independent --

THE COURT: He said February, '69.

Q More specifically though?

A The exact date?

Q By looking at the date on the correspondence.

A Letter from the bill is dated February 28th.

Q That was before or after the conference?

A The letters have to be dated after.

Q And what about with regard to the other exhibits on your left?

A The letter there is dated February 13th, '69.

Q Was that before or after the conference, if you are able to tell from looking at it?

A It would have to be after the conference.

Q I am going to ask you now to look at the first paragraph of that February 28th letter, and ask you if that refreshes your recollection as to whether or not that letter was before or after the Indiannapolis conference (handing to witness)?

A Well, the Boston one would be before Indiannapolis. Boston is Exhibit 48. Boston, -- 47-B is reference to a Boston conference, and that refers to an Indiannapolis conference coming up.

MR. DRUKER: Your Honor, I am going to offer those two documents along with Government's 47 for identification into evidence after showing them to the defendant.

THE COURT: All right.

(Whereupon, the documents were shown to the

defendant.)

THE COURT: Any objection, Mr. Cahn.

MR. CAHN: Yes, sir.

THE COURT: All right. Come to the side bar.

(Whereupon, a side bar was held as follows:)

MR. CAHN: These letters have reference to a trip to Boston, to Boston and to Indiannapolis. This claim has reference to a trip to Florida.

MR. DRUKER: It is just the Indiannapolis portion.

MR. CAHN: Yes. I understand that. There is a claim here where it says, "County being billed from Indiannapolis, rather than New York because Mr. Cahn was lecturing," says the 15th.

MR. DRUKER: I think there is an Indiannapolis airplane ticket here or an invoice.

THE COURT: Here it is. Kennedy/Indiannapolis.

MR. DRUKER: One of these letters refers to "Looking forward to seeing you in Indiannapolis."

MR. CAHN: YOur Honor, there is absolutely no evidence that anybody was double billed on this.

MR. DRUKER: I think there is ample circumstance show evidence that Mr. Cahn was billing the NDAA Indiannapolis, and at least the airfare

portion --

MR. CAHN: No, sir. That is the very purpose of this explanation, that I billed the county from Indiannapolis because that was where I was. I was in Indiannapolis at the time savings the county $15. I billed the county from Indiannapolis, to my memory, and that was strictly for the --

MR. DRUKER: Mr. Cahn argues that is exculpatory, I submit that is the airfares --

MR. CAHN: Where is the Boston one here? There is no billing, no billing to the county for any of the expenses, your Honor. There is only a bill to the county for Indiana Institute of $137.

MR. DRUKER: That is not the county. That is the NDAA.

MR. CAHN: And billed to the --

MR. DRUKER: Mr. Cahn ignores the fact that his statement on February 8th saying, "My airfare was $110, and the rest of my expenses amounted to $27, making a total of $137," for which he was paid.

THE COURT: That may be clear to the fare to Indiannapolis.

MR. CAHN: The county was paid.

MR. DRUKER: What he did is, he just took off

he took off the New York to Indiannapolis portion, it would appear, for the county, and billed the county or Indiannapolis, to Miami bill stating --

MR. CAHN: The county did not pay for the fare to Indiannapolis.

MR. DRUKER: The county paid for more than a fare to Miami.

THE COURT: I think it is insufficient to prove much at this stage. Let's go on.

(Whereupon, the side bar was concluded.)

MR. NEIL CAHN: Your Honor, may we have a ten minute recess.

THE COURT: All right. Let's take a ten minute recess. The jury may go to the jury room. Don't discuss the case. If I would have known, I would have let the jury go when we had the side bar.

(Whereupon, the jury left the Courtroom at 10:50 a.m.)

(Time noted: 11:00 o'clock a.m.)

THE COURT: Be seated, please. Are you ready now.

MR. DRUKER: Your Honor, I figured out what the problem was with regard to thes e exhibits. I would like to ask the Court to reconsider. What we

have here is Mr. Cahn's airline ticket which shows his entire trip from New York to Indiana to Miami to New York, and the airfare for the entire trip is $238. He charges the county. He just takes off one leg of that, that being New York to Indiannapolis. He charges the county $183. Then he charged the NDAA for the New York/Indiannapolis/New York portion of it $110. So, we come out with him getting a total of $297 for $238. In short, the sum of the parts is greater than the whole, and I submit that this is relevant to show that even back in 1969 he was claiming from two entities and receiving more than a hundred percent of his travel expenses. The ticket was $238. That is all, and he received what it cost him, and he received back an excess of some 65 or $50 was involved.

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(Jury not present.)

THE COURT: Are the rest like that; as complicated as that?

MR. DRUKER: There are four of them which may be, and the others will be similar, your Honor. In fact, maybe I can limit myself to four, and give Mr. Cahn some time.

THE COURT: Let me see the County exhibit one minute.

MR. DRUKER: I think the last page on there has the actual airline ticket.

MR. CAHN: What is this Boston thing?

MR. DRUKER: Boston is only in there to show a time frame. This letter shows he had not yet been to Indianapolis. On February 28th he had to be to Indianapolis, so the Indianapolis can fall within that ten day period. The same Indianapolis trip is referred to in his County claim from February 24th.

THE COURT: I see the Indianapolis was $55, and he charged the NDAA twice, which is $110.

MR. DRUKER: Yes, your Honor.

MR. CAHN: Your Honor?

THE COURT: Yes.

MR. CAHN: The County was billed from Indianapolis to Miami.

THE COURT: You just didn't give the County credit for the $55 that you collected from the NDAA.

MR. CAHN: Your Honor, the County being billed from Indianapolis rather than New York, because Mr. Cahn was lecturing, obviously indicates that there was a claim, that there was a deduction. This is the voucher that is kept in the regular course of business, and it states on here the County was being billed from Indianapolis rather than New York because Mr. Cahn was lecturing in Indianapolis at the time and saving the County whatever it is, $15.

MR. DRUKER: All right.

THE COURT: You just didn't disclose it. You made $55 on the deal.

MR. DRUKER: The County got a bargain.

THE COURT: Yes. I think it is admissible under the circumstances.

MR. DRUKER: Your Honor, first though, I don't like to do this, but I realize the difficulties in a defendant representing himself. I am referring to the last side bar. I am going to ask if Mr. Cahncan try to refrain from the hysterics. He's going to have to try to conduct himself as an attorney when he is acting as an attorney rather than as a defendant or a client.

THE COURT: Well, I will pay attention to it next time. Let's bring in the jury.

(Whereupon the jury entered the courtroom at 11:05 a.m.)

THE COURT: All right, Mr. Druker, continue.

MR. DRUKER: At this time I offer these.

THE COURT: I think you ought to mark just the two pages you are concerned with.

MR. DRUKER: Referring to 47. Very well, your Honor.

THE COURT: Don't take them apart.

MR. DRUKER: That is no problem.

THE COURT: Leave them together but mark the folder, and I'll mark that part 47A1.

THE CLERK: So marked 47A1 in evidence.

(So marked.)

THE COURT: And then I am going to receive in evidence -- what is the other one?

MR. DRUKER: 47A and 47B for identification.

THE COURT: Yes. All right.

THE CLERK: That is 47A in evidence and Government's 47B marked in evidence.

(So marked.)

THE COURT: Continue.

Q Mr. Healy, I am going to show you a document marked as

Government's 48 for identification, this one that you previously identified, and I will ask you to tell the jury what that document is.

A It's a page out of our checkbook. It is the check stub section of the checkbook.

Q And does that reflect what the check that accompanied that at one time was issued for?

A Yes, it does.

Q What was it issued for?

A It says, "Reno meeting, 9/14, 9/15, 9/16, NDAA."

Q What year was that?

A September 30, 1969.

Q To the best of your recollection, was there a meeting back then?

A To the best of my recollection, there was.

Q Was there a check issued pursuant to that meeting to Mr. Cahn?

A Yes. The check stub shows it.

Q For his expenses of his travel?

A I would assume so, yes.

Q Was it reflected on the document that you have in front of you now?

A Yes.

MR. DRUKER: After showing this document to

the defendant, I'm going to offer 48 and 48A into evidence.

MR. CAHN: May I inquire?

THE COURT: Yes, I guess so. It is not an original.

VOIR DIRE EXAMINATION

BY MR. CAHN:

Q Mr. Healy, do you have any correspondence in reference to that Reno meeting?

A Not concerning the expenses. To the best of my ability, I can't find it.

Q Do you know that to your knowledge, for that particular check issued was for travel expenses, Mr. Healy?

A My own independent knowledge?

Q Yes.

A No.

Q You have no idea?

A No. I am going by the record.

Q What does the record show?

A In --

Q Was that not a meeting of prosecutors, a committee of prosecutors of which I was chairman, which I set up for a few days to write up minimum standards for prosecutors?

THE COURT: That has nothing to do with this.

MR. CAHN: I suggest, your Honor, it does.

THE COURT: All right. Go ahead.

A There was a meeting in Reno of about six to eight district attorneys to go over the ABA standard on prosecution, yes.

Q Isn't it a fact, Mr. Healy, that this particular check was for the expenses that was laid out by me in Reno on behalf of that committee?

A Very well could be.

MR. CAHN: I object.

THE COURT: Overruled. It may be received. You have not challenged the authenticity of the document. You have raised the question as to the relevance, and that is a matter for the jury.

MR. CAHN: Your Honor, the witness has testified that he has absolutely no knowledge that that particular check was for travel expenses, and I submit that the submission of that particular checkbook entry --

THE COURT: Let me see it.

(Handing to the Court.)

MR. DRUKER: Your Honor, I would ask the Court to further examine 48, particularly the last set of figures at the bottom which I think may be relevant

when looking at the figures on 48A. And furthermore, adding to that, the air fare.

MR. CAHN: I submit.

THE COURT: I think it is relevant evidence. The effect to be given is for the jury to decide.

MR. CAHN: I take exception to your Honor's ruling.

THE CLERK: Government's Exhibits 48 and 48A marked in evidence.

(So marked.)

DIRECT EXAMINATION

BY MR. DRUKER: (continued)

Q By the way, Mr. Healy, with regard to the check that was issued pursuant to the 48A, that would have been check number 1755; is that correct? (Handing to witness.)

A Right.

Q Did you make a diligent search of your records for that check?

A We have.

Q Were you able to find it?

A I cannot find it.

Q Do you know whether or not there was any correspondence from Mr. Cahn that caused that check to be issued?

A No. This is all I have concerning that item. I can't find anything on it.

Q In the regular course of business, would you issue some sort of check on that without a letter requesting it?

MR. CAHN: Objection.

THE COURT: Overruled.

A No.

Q Mr. Healy, showing you now Government's 49 for identification, a document that you previously identified as business records of the NDAA. I will ask you to tell the jury what those documents relate to? (Handing to witness.)

A Concerns a trip to Arizona. Phoenix, I believe.

Q And was there a trip to Phoenix, Arizona?

A To the best of my recollection, there was.

Q When was that?

A 1969.

Q And were you able to tell from the document or independent recollection when in 1969?

A It would have to be the latter part of October or the beginning part of November.

Q And did Mr. Cahn attend that Phoenix conference?

A Yes, He did.

Q Was he paid by the NDAA by his attendance there?

A Yes, he was.

THE COURT: Wait a minute. Paid for his attendance is an odd word.

MR. DRUKER: I am sorry.

Q Was he paid by the NDAA for travel expenses, according to those records?

A Yes.

Q In conjunction with his attendance in Phoenix?

A Yes.

MR. DRUKER: Your Honor, I am going to, after showing to the defendant, offer 49 and 49A.

THE COURT: All right. Show them to the defendant.

(Handing to the defendant.)

MR. CAHN: I have no objection.

THE COURT: All right, mark them.

THE CLERK: Government Exhibits 49 and 49A marked in evidence.

(So marked.)

MR. DRUKER: May Ihave one moment, your Honor?

THE COURT: Yes.

Q From time to time, do you pay honorariums to individuals who lecture or perform services for the NDAA?

A We do.

9a

34a

Q And you pay these out of NDAA funds?

A We do.

Q What about with regard to LEAA funds? Do you pay honorariums?

A No.

(Continued on next page)

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BY MR. CAHN:

Q Mr. Healy, I show you Government's Exhibit 49 and 49-A, and ask you as to whether or not you have any knowledge as to how many times during that period of time stated on the exhibit that I went back and forth from New York to Arizona?

A How many times do I know?

Q Yes.

A I have no idea.

Q It is indeed possible, Mr. Healy, that I may have gone to Arizona and returned to New York for a day and went to Arizona.

MR. DRUKER: Objection as argumentative.

THE COURT: Statements as to what is possible, I will permit.

Q Do you know whether or not I went to Arizona, returned to New York and went back to Arizona within a day or two?

A I have no idea.

Q And there would be nothing in your 49-A that would indicate that to you?

A No.

Q Now, in People's Exhibit 48-A, would you read exactly what the history of what is stated there, in reference to that Reno trip.

A It says, "Date, September 30, 1969, to William Cahn for Reno meeting, 9/14, 15, 16, ABA-NDAA, $489.45." That is the entry.

Q And do you have anything else in reference to this particular trip?

A I can't find anything.

Q Is there anything on that exhibit, Mr. Healy, that indicates that check is for travel?

A No.

Q And isn't it a fact, Mr. Healy, that while in Reno with the District Attorneys involved in the committee, there was entertainment?

A Dinners, yes.

Q And other entertainment; if you know.

A Well, you just went to dinner. I don't know what entertainment you mean.

Q Luncheons, dinners.

A Lunches and dinners, surely.

Q And shows?

A In Reno?

Q Yes.

A There might have been. I don't recall the shows.

Q This is 1969; is it not?

A '69, right.

Q And isn't it a fact that that check was for payment to the Chairman for the expenses of entertainment of the District Attorneys present?

A Could be.

MR. DRUKER: I am going to object to the "Could be." The question was, "Isn't it a fact."

THE COURT: I guess it is not a statement that shows anything of the witness' knowledge. It is like the question, "Is it possible." So, at a proper time, I will probably tell the jury that it is not a probative answer.

Q Well, didn't you tell Mr. Druker, Mr. Healy, on direct examination, that this could be for travel?

A It could be for travel, entertainment. It could be for anything. It was for a meeting in Reno. I don't know what the specifics of the meeting are.

Q I am not concerned with the specifics of the meeting, and if I may correct you, the specifics of the meeting concerned minimum standards --

A They did.

Q I am concerned about the specifics of this particular check, Mr. Healy.

A I understand.

MR. DRUKER: Your Honor --

A (Continuing) If I do not have the back-up material --

Q Do you know what it is for?

A I do not.

MR. DRUKER: If Mr. Cahn is going to shout at the witness, I would ask that he return to the lectern.

THE COURT: Are the normal expenses that you say, travel expenses?

THE WITNESS: Travel, hotel, out-of-the pocket. If he entertains somebody, entertainment.

THE COURT: All right. Go ahead.

MR. CAHN: Excuse me, your Honor.

Q Now, you spoke of a meeting in Washington with me, Mr. Healy; did you not?

A Yes.

Q Mr. Druker asked you the subject of our conversation?

A Yes.

Q Did you discuss these particular items with Mr. Druker prior to your taking the testimony, prior to your taking the witness stand?

A Which specific items?

Q Government's Exhibit 48-A.

A Yes. He showed me all the exhibits that I looked at and identified so far.

Q And did you tell him unequivocally that this check represented a check for travel expenses?

A I don't think I said that. I said I couldn't find back-up material, and that is all I had. It could be for anything.

Q You told him that?

A As far as I know.

Q Mr. Healy, you spoke of --

MR. CAHN: Your Honor, Mr. Druker only read half of the By-law.

THE COURT: You want to read the rest?

MR. CAHN: May I do that, sir?

MR. DRUKER: No objection.

THE COURT: Yes.

MR. CAHN: "Any travel and other expenses shall be incurred only with the prior approval of the President and the Executive Director, whose approval shall be given only if adequate provision for such reimbursement has been made in the budget. No employee of the corporation shall incur travel expense without the prior written approval of the Executive Director

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or in his absence, the President. Proper vouchers, invoices, et cetera, shall accompany any request for travel or other expenses. Such reimbursement may be approved or disapproved by the Executive Director, who before approval shall ascertain proper budgetary provision, proper authorization where necessary, and that no duplication of right to reimbursement exists."

Q Mr. Healy, was this By-law of the National District Attorneys' Association followed by you?

MR. DRUKER: I am going to object to that as being irrelevant.

THE COURT: I will let him answer.

A No.

Q Mr. Healy, did you know that the defendant William Cahn was conducting county business on some of the trips with which, at the same time, he attended functions of the National District Attorneys' Association?

A There are occasions I know you were doing something in San Francisco, yes.

Q In reference to the County of Nassau?

A Jail investigation, I think.

Q And did you make inquiry of the defendant William Cahn, whether or not he was receiving reimbursement for his traveling from the County of Nassau?

A I did not.

Q Did you ever make inquiry from anyone, any of the District Attorneys who traveled on behalf of the National District Attorneys' Association as to pursuant to Article 12, that no duplication of right to reimbursement exists? That determination is the responsibility of -- that determination is placed on you by this By-law; is it not?

A Yes.

Q And did you make such inquiry?

A Not that I recall.

Q Mr. Healy, do you remember prior to November of 1974, when you discussed or if you discussed with the defendant or anyone else, By-law No. 12?

A I don't recall discussing that with anybody?

Q How long have you been with the Association?

A Came with the Association in '67. Became the Executive Director in '68.

Q And there was no time that you remember discussing this prior to this particular case with any of the members of the Association?

A Not that I recall.

Q As a matter of fact, it's stated here that it states in the article, as I read it, "...shall be the policy of the corporation to minimize expenditures out of its general

fund for travel or other expenses."

Did you, when you invited or asked members of the National District Attorneys' Association to participate in the various functions of the National District Attorneys' Association, did you follow that? Did you minimize the expenses?

A Yes, as best we could.

Q Did you provide the speakers with suites?

A Only where we could.

Q And what do you mean "only where we could"?

A Well, when you book four to five hundred rooms in a hotel, the policy of the hotel is to give you so many complimentary rooms. Either that or convert those into one or two suites and give those to high-ranking officers.

Q And you would have to pay for the other officers or the other guests who attended the Association meetings from the general fund; is that correct?

A If it was a conference, and it was one of our fund raising conferences, yes.

Q If you hadn't given the high-ranking officer who participated in the Association suites, you could have used perhaps another room to provide less of an expense to the Association for some other speaker; isn't that correct?

A Well, they would make another room available,

yes.

Q So in that way you didn't minimize the expense of the Association?

A In that way, that is true.

Q And isn't it true, Mr. Healy, that you permitted your speakers to rent cars for the time that they were there?

A Some rented cars, yes.

Q And would you say that this was minimizing the expense of the Association?

A Yes and no.

Q I will accept that.

And, Mr. Healy, isn't it true that if a speaker was scheduled to speak for one day, let's say for the sake of discussion, in San Francisco, and he wanted to stay for three days, the Association would pay for the two extra days that he stayed?

A We would.

Q Would that be minimizing or attempting to minimize the expenditures of the Association?

A Technically not.

Q Now, in this conversation in Washington with me, with reference to the complimentary suite in Las Vegas, didn't you tell me that it was the policy of the Association to pay for the hotel lodging, whether or not you slept on the park

bench?

A You are entitled to it per diem, yes.

Q There was nothing sneaky about that; was there, Mr. Healy?

MR. DRUKER: I am going to object to that.

THE COURT: Sustained.

Q How many phone calls do you get a day from members of the Association, Mr. Healy?

A Phone calls?

Q Yes.

A I don't know. I am on the phone constantly.

Q Pardon?

A I am on the phone constantly.

Q Could you approximate?

A Just from members?

Q Yes.

A Well, just from members, if it is, maybe five, six.

Q In reference to those with whom the Association has either financial or professional business, could you approximate?

A All business on the phone was Association business. I mean --

Q Approximately.

A I have no approximation. I know we have nine lines coming in the office, and they are all busy.

Q Would it be unusual for you to receive a call from a member of the Association who's been invited to speak or participate in a particular National District Attorneys' Association project, questioning you about the methodology of payment?

A Is it uncommon?

Q Yes.

A No.

Q Not uncommon at all?

A That the first question, they did ask.

Q Now, Mr. Healy, I show you Exhibit 12-A in Evidence, purporting to be a letter from me to you, in reference to a trip to St. Paul. Were you present at that particular meeting (handing to witness)?

A I must have been. It says, "Good to see you in St. Paul."

(Continued on next page.)

Q And had I wanted my check at that particular time, could you have given it to me?

A No.

Q Then as I understand it, Mr. Healy, it was at your request and for the convenience of the National District ATtorney's Association --

MR. DRUKER: Objection.

THE COURT: I think where you're standing you interfere with Mr. Druker's seeing the witness. But, I think you ought to be able to finish the question. You started out as a statement which I presume you intended as a question.

Q Am I to assume it was at your request at the convenience of the National District Attorney's Association that a claim had to be mailed in order to collect a check?

A It had to be in writing, yes.

Q Pardon?

A It had to be in writing, and 99.9 percent of the times mailed.

Q Well, if the writing took place in St. Paul, couldn't you have given me the check there?

A I didn't carry the checkbook.

Q So again, it was for the convenience of the District Attorney's Association.

MR. DRUKER: Object. That question is a non sequitur from the answer. I submit it is fanfare.

THE COURT: Let him answer.

MR. CAHN: I submit to you --

THE COURT: Please. I have overruled the objection. Go ahead with your statement. I am not accepting your statement as to his relevance.

A Would I pay on the road?

Q Yes.

A Highly unlikely, no. No.

Q It was the request of the National District ATtorney's Association that a claim be mailed to it?

MR. DRUKER: Objection.

A Yes.

THE COURT: Overruled.

Q I show you People's Exhibit 11A, and ask if you, the same does not hold true for that.

(Handing to witness.)

A That I paid by mail?

Q No. That it was for the convenience of the District Attorney's Association to use the mail.

A Yes.

Q And 13A (handing to witness)?

A Yes. The same holds true.

Q 14A (handing to witness)?

A Yes.

Q 15A (handing to witness)?

A Yes.

Q 16A (handing to witness)?

A Yes.

Q 17A (handing to witness)?

A Yes.

Q 18A (handing to witness)?

A Yes.

Q 19A (handing to witness)?

A Yes.

Q 20A (handing to witness)?

A Yes.

Q 21A (handing to witness)?

A Yes.

Q By the way, could you read to the jury the last paragraph of the letter relating to Exhibit 21A?

A "My hotel bill will be sent to you. I arrived Tuesday morning and wasn't leaving until late Tuesday evening, and therefore I wanted a rest in a hotel room. Rather than to get a new room, I told them to use mine and send the bill. Therefore, it is not included in my expenses."

Q Did you receive the bill from J. Neal?

A I assume so.

Q Didn't receive one from me?

A It's not listed.

Q 22-A is the same provision as to mailing?

A Yes.

Q 23-A (handing to witness)?

A Yes.

Q 24-A (handing to witness)?

A Yes.

Q 25-A (handing to witness)?

A Yes.

Q 26-A (handing to witness)?

A Yes.

Q 27-A (handing to witness)?

A Yes.

Q And 28-A (handing to witness)?

A Yes.

Q No, that's 3-A, excuse me.

A 3-A.

Q 4-A (handing to witness)?

A Same question?

Q Yes.

A Yes.

Q 5-A (handing to witness)?

A Yes.

Q And 6-A (handing to witness)?

A Yes.

MR. DRUKER: I am going to object on 3 through 6-A, mailing is not an element of the offense on those counts, your Honor.

THE COURT: I think it is as to who served, but I permitted the testimony. I will let this in also.

Q Now, each time that I attended a meeting in reference to claims 12-A through 27-A, Mr. Healy, did the National District Attorney's ASsociation get what it paid for?

MR. DRUKER: Object. There are circumstances here which were beyond the witness' knowledge, and I don't think that's a question.

THE COURT: Sustained. None of these are honorary. I thought those were all travel expenses.

MR. DRUKER: That's all that's in issue here.

THE COURT: Objection sustained.

Q Each time a check was sent in reference to Government's Exhibit 12-A through 27-A, did the defendant attend these conferences?

A Yes.

Q Did he participate in the manner that he was requested to participate?

A Yes.

Q Which would justify his receiving the expenses?

A Well, as far as we are concerned.

MR. DRUKER: Objection.

THE COURT: Well, "as far as we are concerned," is the answer. So let it stand.

MR. DRUKER: Your Honor, my objection is, I move to strike because that is a legal conclusion which is really the jury's domain. I think that answer doesn't take into account the witness' lack of certain circumstances, and it is really a jury question.

THE COURT: Well, you didn't mean that you were in any way authorizing the defendant to disregard the by-law against duplicate payment; did you?

THE WITNESS: We asked him to do some. He did what he was supposed to do. He is entitled to repayment.

THE COURT: Under Rule 12, he should have

notified you against making a claim elsewhere.

THE WITNESS: That never came up.

Q Did you ever make inquiry from anyone in reference to Article 12?

A Are you talking about any officer or director of the Association?

Q Yes. Did you ever specifically make inquiry prior to November of '74?

A I can't recall any instances.

Q And was there in Exhibit 12-A through 27-A, Mr. Healy, I ask you if there are any vouchers supporting the letter.

A I am sorry. I coughed. What was the last part of the sentence?

Q If there are any vouchers supporting the claims which were mentioned in the letters.

A When you say, "voucher," you mean county voucher?

Q No.

THE COURT: He means hotel bills and air tickets; supporting documentation.

Q Yes.

A The only one here is for 14-A, there is a car rental bill attached.

Q And all of the --

A All of the others are just letters.

Q And was that not a violation of Article 12?

A Technically, yes.

Q Did the fact that the matter is, Mr. Healy, that Article 12 just was not observed?

MR. DRUKER: Objection.

THE COURT: Sustained.

Q Now, I show you Exhibit 4-A and ask you if there is attached to that a LEAA voucher form (handing to witness).

A No.

Q And you testified, did you not, that that particular claim involved a function which was paid by LEAA funds?

A I did.

Q And you said that there were LEAA regulations involving grants?

A There are.

Q And to whom do those LEAA regulations go?

A To the grantee. To the one that receives the money.

Q And who received the money?

A The grant was given to the National District

Attorney's Association.

Q And does anybody else receive the regulations, to your knowledge?

A Well, anyone who gets a grant, plus all regional offices, national offices, state SPA, they are promulgated.

Q The grantees of the grant?

A Oh, individual?

Q Yes.

A They don't get them.

Q They don't get them?

A No.

Q And so, the regulations involved are for the benefit of the grantee.

MR. DRUKER: Objection.

THE COURT: Sustained.

Q I show you Exhibit 3-A and ask you if 3-A involves a voucher form, LEAA funds. (Handing to witness.)

A It is a voucher for LEAA funds, yes.

Q Who prepared that voucher form?

A I think the center in Washington did.

Q What center?

A The National Center for Prosecution Management.

Q Did LEAA prepare a form?

A No.

Q They didn't prepare that form?

A No.

Q I show you --

THE COURT: Let me see that, and the other one.

(Whereupon two exhibits were handed to the Court.)

Q I show you Exhibit 5-A and ask you if there is a form, a LEAA voucher form of some kind involved with that particular claim. (Handing to witness.)

A Yes.

It is a form from the National Center again.

Q Who prepared that?

A National Center, I assume.

Q Is that the same form that I just showed you in the other exhibit?

A I don't believe so.

Q It was changed?

A Yes.

Q I show you Government's Exhibit 6-A and ask you about a LEAA form for that. Is there one attached? (Handing to witness.)

A Yes.

Q Who prepared that form?

A National Center in Washington.

Q When you say, "the National Center in Washington," are you talking about the National Center for Prosecution Management?

A Yes, I am sorry. The National Center for Prosecution Management.

Q LEAA didn't formulate any of those forms?

A No.

Q And is that different from the other two?

A Well, 3-A is certainly different from 6-A and 5-A. 5-A and 6-A, I haven't compared the line on them. You want me to do that? Read every word? Wait a minute. They are constantly being changed. They look similar.

Q Are they exactly the same?

A I have no idea. I would have to really read them closely.

Q The form itself, not necessarily -- you may do it.

A As far as I can ascertain, they are the same.

Q So 6-A and 5-A are the same, and 3-A is different?

A Yes.

Healy-cross

THE COURT: Let me have 3-A, please.

(Handing to the Court.)

THE COURT: Go ahead.

Q Now, you just mentioned, did you not, Mr. Healy, that these forms were constantly being changed.

THE COURT: I didn't hear that.

(Whereupon the court reporter read the last question back.)

THE COURT: Are they constantly being changed?

THE WITNESS: They were, and they still are, yes.

(continued next page)

Q Does that come about as a result of the constant changes of the regulations of the law, the Federal Law Enforcement Administration?

A Comes about for numerous reasons though. We are trying to get the proper information to satisfy everybody.

Q What do you mean by that?

A Auditors, LEAA, our own accountants.

Q What kind of information?

A Well, computation per diem, computation for travel. And now we are starting to add affidavits on the form, itself, for numerous reasons.

Q May I suggest to you that these regulations, are vague and are not understanddie by the grantees who were receiving the grant.

MR. DRUKER: Objection.

THE COURT: Sustained.

Q Did you understand all of therules and regulations given to the National District Attorney's Association?

MR. DRUKER: Objection.

THE COURT: I will let him answer.

A No.

MR. CAHN: Is your Honor finished?

THE COURT: Yes.

MR. CAHN: Thank you.

Q Mr. Healy, I show you exhibit 3A, and ask you if that is the format that was submitted by the defendant, William Cahn, to the National Prosecution Management for reimbursement of expenses? (handing to witness.)

A It was. It is the form.

Q Exactly as it was submitted?

A It's been marked up. Is that what you mean? It's been marked up. It's been processed.

Q Other than the processing itself, were there cross-outs made?

A Oh, yes.

Q And may I ask you to tell the court and the jury what cross-outs were made, and what was substituted, if anything?

A On the top line where it gives the amounts of per diem, $25.00. That is crossed out, and $40.00 is added, and down below, on line six, where the word per diem is typed in, dollars $40.00 is put in a ball point pen. That has all been lined out.

Q Who did that?

A I assume the Center in Washington did that.

Q Did the defendant, William Cahn, do that?

A Not that I know.

Q Mr. Healy--

MR. CAHN: I ask that this be marked for identification.

THE COURT: Mark it.

THE CLERK: One page document marked defendant's exhibit B for identification.

Q I show you defendant's Exhibit B for identification and ask you if this is not the xeroxed copy of the form as it was when received by the National Center for Prosecution Management (handing to witness)

A Possibly, could be.

Q Well, could you tell me how it's different from Government's Exhibit 3-A in evidence?

A It looks like the exact same form, except the lines have not been crossed out on the per diem statement.

Q And is it your testimony that the National Center crossed out $25.00 a day and put in $40.00.

MR. DRUKER: Objection. Asked and answered. The answer was he didn't know who did it.

THE COURT: Overruled.

A I just assume they did. I assumed they did.

MR. DRUKER: Objection. Move to strike on the assumption.

THE COURT: Overruled.

Q Did the defendant, William Cahn, certify in any

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way, by that form, that he spent $40.00 a day per diem?

A No.

Q And this is LEAA Funded?

A That's right.

Q Is that $40.00 a day payable to the defendant, whether he spent it or not?

A Now or then?

Q Then.

A I think so.

Q In other words, if the defendant went to Mexico and slept at his grandmother's house, the Government would be obligated to pay $40.00 a day?

MR. DRUKER: Objection.

THE COURT: Sustained.

I don't think the witness knows.

Q I am talking now about the LEAA Regulations which were received by the grantee, the National District Attorney's Association, of which you are empowered to sign checks?

A I understand that. I understand that. The regulations are changing.

Q Pardon?

A The regulations are changing.

Q I understand they are changing. I am now talking about --

A 73. 73. 74.

Q March of 1974?

A To the best of my recollection --

MR. DRUKER: Objection. I don't think that there is a question before the witness at this moment. The last question was objected to and sustained.

MR. CAHN: I am going to repose the question. His position was the man that was responsible for the LEAA Grant, and the one who received the regulations.

THE COURT: Where are the regulations?

MR. CAHN: The prosecution brought out the fact of regulations.

THE COURT: What is your question?

Q I sav to you, Mr .Healy, that in March of 1974, --

THE COURT: Don't know. Don't say anything. Ask him, please.

MR. CAHN: This is cross-examination, Your Honor.

THE COURT: Yes, sir, but it still is based on questions, and not by statements of counsel.

Q In March of 1974, would LEAA Regulations permit a per diem payment of $40.00 a day regardless of whether or not $40.00 a day was spent by the individual?

MR. DRUKER: Objection.

THE COURT: Objection sustained. Mr. Healy, this exhibit 4A says, "enclosed find bill for expenses," and there is no bill. Was there a bill,and if so, what happened to it?

THE WITNESS: Your Honor, we made a diligent search, and I don't know the exact number 4, 5 or 6. We cannot find supporting documentation.

THE COURT: All right. Thank you.

Q Now, in reference to exhibit 3A; that involved a board meeting of the National Center for Prosecution Management in Mexico City; did it not?

A Yes.

Q And was there a question as to whether or not LEAA was going to authorize payment for a meeting outside the Continental limits of the United States?

A Yes. I think you had to get permission.

Q And could you tell me in reference to Exhibit 3A when this claim was made?(Handing to witness.)

A When the claim was made?

Q Yes, sir.

A I don't see a date on it. Oh, here it is. March 25, 1974. It is dated.

Q And could you tell me when the check from the National Center of Prosecution Management was sent?

A May 16.

Q Almost three months?

A Yes.

THE COURT: Two.

THE WITNESS: Two months.

MR. CAHN: Two months. Excuse me, Your Honor. I am sorry.

Q Now, Mr. Healy, was the defendant compensated for attendance at the National Center for Prosecution Management?

A You mean for expenses?

Q I didn't say that. I asked you whether or not he was compensated.

MR. DRUKER: Object unless the witness states how he finds this compensation in this contest.

THE COURT: I presume compensation means something in the nature of an honorarium payment for services.

THE WITNESS: No one got honorariums Your Honor. As far as I know, no.

Q There is no fee?

A No.

Q No honorarium?

A No.

Q There was reimbursement of expenses?

A Up to the limits of the guidelines, right.

Q And insofar as the guidelines, were concerned, Government's Exhibit 3A says $40.00 a day (handing to witness).

A Yes.

Q Now, on Exhibit 5A where it says "per diem computation," what does that say?

A It says eleven quarters. Is that what you mean? Eleven quarters under per diem $6.25 a quarter, $68.75.

Q Who put that in there?

A That would be done by the National Center for Prosecution Management. They compute the quarters.

Q They compute the quarters?

A Normally they do, yes.

Q There was no certification or statement by Mr. Cahn that he had eleven quarters at $6.25 per quarter?

A You mean by the Center?

Q There was no statement on this part of 5-A.

MR. DRUKER: Your Honor, object on the ground of relevance. The allegations, don't involve per diem in this case.

MR. CAHN: Don't involve what, Mr. Druker?

MR. DRUKER: Per diem.

THE COURT: Let me see it.

(Whereupon Exhibit 3A was handed to the court.)

THE COURT: I suppose what it means is quarters per quarter days. $6.25 for each quarter of a day when it was $25.00 a day, but I think Mr. Druker's point Mr. Cahn, is that there is no charge of falsity in connection with the hotel bill. It relatesonly to the travel expenses.

MR. CAHN: Your Honor, I submit to you that this voucher is the basis of the countsl, 2, 3, 4, 5, 6, and it is stated that I made false representations and I think --

THE COURT: All right. If you want to show there was some true representations in it, I suppose you can do so.

MR. CAHN: There was no representations of any kind that was put in before, but were put in after.

THE COURT: All right. Please continue.

Q When the Center received that exhibit, Mr. Healy, was there certification on Government's Exhibit 5-A that there eleven quarters at $6.25 per quarter by Mr. Cahn:

A No.

Q And on Exhibit 6A was there certification that there were eight quarters, at $6.25 per quarter by Mr. Cahn prior to the time you received?

A No.

Q The certification. That was put on bythe Center.

MR. DRUKER: Your Honor, I think the point is made again. I object. There is no relevance, no falsification of per diem. I will stipulate it that the Government is not contending and there is no evidence that the per diem was falsified.

MR.CAHN: I appreciate the stipulation, but I think it is vital to the defendant's case.

THE COURT: If you think it is important to show whether or not the travel certification is false, there are other things on the document that are true. Is that it?

(continued next page)

Healy-cross

MR. CAHN: That plus, your Honor, other matters that I don't think we should discuss before the jury at this time.

THE COURT: All right. See if you can speed up this part of it.

MR. CAHN: Your Honor, for the record, may I take exception to your Honor's remarks.

THE COURT: Well, you are working on something that the Government has offered to stipulate to.

MR. CAHN: I am not trying to tell the Government how to try its case.

THE COURT: I am trying to tell you where you should exist on time, and I think that is within my power. All right. Go ahead.

MR. CAHN: I am doing the best I can, your Honor.

Q Now, Mr. Healy, when was the first time that you heard of this investigation?

A The very, very first time?

Q From --

THE COURT: The first time is the very, very first, if you want to call it that way.

THE WITNESS: It's been a long haul. Well, it had to be by way of phone calls to Chicago.

Q Were you in Chicago at the time?

A Yes.

Q And approximately when was that?

A Oh, I don't know what year it was. I just didn't make any record of it.

Q And did there come a time when you were in Honolulu when you heard from the Government?

MR. DRUKER: Your Honor, I object to this. I don't see what relevance this has.

THE COURT: Overruled.

A It wasn't Honolulu, it was Maui.

Q Do you know when that was?

A I think it was in November. I don't know the year. A year or two ago.

Q If I suggested November of 1974, prior to the election?

MR. DRUKER: Objection, your Honor. We are going to get into allegations that this is a --

THE COURT: No. I think that a certain amount of this I will listen to.

A Yes.

Q And do you remember to whom you spoke?

A Well, first of all, I talked to my office because they called me.

Q Yes, but --

A And then eventually I spoke with the U.S. Attorney's Office.

Q And do you know who in the U.S. Attorney's Office you spoke with?

A Spoke with a series of people. I spoke with Mr. Trager. I don't know if it was I or my associate that spoke with First Assistant -- Puccini, is it?

THE COURT: Puccio.

A (Continuing) And I don't know if I spoke with Mr. Druker or Goldman. Either one.

Q Did there come a time when you were requested to show records of the National District Attorney's Association on the Saturday before Election Day?

A We had a request, yes.

Q And did you accede to that request?

A Eventually.

Q On Saturday?

A Not Saturday. I don't think -- no.

Q When did they come in?

A When did people come to the office?

Q Yes.

MR. DRUKER: Your Honor, can we have a side bar and an offer of proof. I think I know where we are going. I think it is entirely improper.

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THE COURT: All right.

(Whereupon, a side bar was held as follows):

THE COURT: Are you leading up to some inconsistent prior statement?

MR. CAHN: No.

THE COURT: What is the relevancy.

MR. CAHN: The relevancy is in reference to Mr. Druker's questioning of Mr. Christ in reference to my activity, insofar as these claims were concerned during the election time, and I want to show that, number one, that there was an insistence of seeing the records on Monday prior to Election Day, and that there was no official investigation up until that time, and Mr. Healy insisted that unless there was an official investigation, he wouldn't permit the record to be seen. He said, "O.K. We will have a letter to show it was an official record," and we went on Monday and we would have held him completely responsible.

In addition to that, I am going to show other activity on the part of the United States Attorney's Office which indicates that this is a political vendetta.

THE COURT: Objection is sustained. I am not

going to go into that.

MR. NEIL CAHN: Your Honor, this material will relate to the credibility of one of the witnesses who will testify as to a document or fact directly on the merits of this case.

THE COURT: I will call him back.

MR. DRUKER: I have no objection to Healy being recalled.

(Whereupon, the side bar was concluded.)

Q Mr. Healy, you were questioned by Mr. Druker as to whether or not there was any conversation between Mr. Cahn and yourself about whether or not Mr. Cahn told you that he was billing the County of Nassau for the same expenses, is that correct; and you said no.

MR. DRUKER: I don't believe that was the question or the answer.

THE COURT: Well, the substance of it was.

MR. DRUKER: He was asked about a complimentary hotel room and discussion with Mr. Connor, but there no questions about what Mr. Cahn just suggested.

MR. CAHN: My recollection is different, your Honor.

THE COURT: Well, why don't you go on. We're just trying to introduce. Or why don't you go on to

the next question.

Q Was there any conversation between Mr. Cahn and yourself -- between the defendant, in reference to the fact that the County of Nassau was being billed for the same expenses?

A I don't recall any.

Q Insofar as the NDAA was concerned?

A I don't recall any.

Q Had you known that fact, would you have paid the expenses?

MR. DRUKER: I am going to object to this as being irrelevant. As to what he would have done, he has already testified as to what the policy of the corporation was.

MR. CAHN: Your Honor, I submit that a By-law was submitted, making him responsible.

THE COURT: I think it is a hypothetical question.

MR. CAHN: I offer it as a hypothetical question.

THE COURT: Objection sustained.

MR. N. CAHN: May we approach the side bar, your Honor?

THE COURT: No. We have had enough side bars for a while.

Q Mr. Healy, prior to your association with the National District Attorney's Association, what was your position?

A Federal prosecutor for two years, Northern District of Illinois, Eastern Division.

Q You are an attorney?

A Yes.

Q Duly admitted to practice in the State of Illinois?

A Yes.

Q For how long?

A '61.

Q And after your association with the Federal Attorney's Office in Illinois, did you hold any other public position?

A It was before that.

Q Prior to that then.

A Four years an Assistant Prosecutor at Cook County, State's Attorney's Office.

Q As an attorney, and a former prosecutor, a State's Attorney is like a District Attorney; is it not?

A Same thing.

Q Same thing.

As a lawyer, a State Prosecutor, Federal Prosecutor,

do you know, of your knowledge, any law which prohibits the billing of a municipality and a billing of a private association?

MR. DRUKER: Object.

THE COURT: Sustained.

MR. DRUKER: He's not a jury.

THE COURT: Law is something that can be shown in briefs.

MR. CAHN: I am asking him whether he knows of any law or statute.

THE COURT: It should come from law and not from witnesses. Objection sustained.

MR. CAHN: May I suggest that your Honor permitted Mr. Christ to testify?

THE COURT: I may have made a mistake. I will not repeat it. Anything more?

MR. CAHN: No further questions.

THE COURT: Is there any redirect?

MR. DRUKER: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Healy, you testified on cross-examination, did you not, that you never inquired of Mr. Cahn as to whether or not he was being reimbursed by Nassau County on any of

the trips which he submitted claims to you; is that right?

A That's right.

Q Did anything ever come to your attention or did it ever occur to you that he might be getting paid by some other entity?

THE COURT: This covers the entire time?

MR. DRUKER: Yes, sir.

THE COURT: All right.

A Not really.

Q Now, with regard to By-law 12, your testimony to cross-examination was, I think, that with regard to the second and third paragraphs, the By-law was not followed to the letter; is that right?

A Yes.

Q More specifically, that you didn't require the back-up documentation or I think even have Mr. Cahn submit prior written requests and the like, before his travels; is that right?

A Right.

Q Is it fair to say that you operate on a system of trust, more or less; that if he said he had incurred a $200 airplane bill, that you assumed that's correct?

A That's correct.

Q And is the National District Attorneys' Associa-

tion an incorporation?

A Illinois. Non-profit.

Q A not for profit corporation?

A Yes.

Q Now, Mr. Cahn asked you on cross-examination about the mailings of a number of documents which are now in evidence, and I think you testified it was for the convenience of the NDAA that these were mailed; is that your testimony?

A That is what he asked me, and that is what I said, yes.

MR. DRUKER: May I have those claims, please, Mr. Cahn.

Q Now, without going through each claim individually, some of these claims are for a trip to St. Paul, to Minnesota, to Washington, D.C.; are they not?

A Yes.

Q Las Vegas, Nevada; San Francisco?

A Yes.

Q Houston, Texas; Denver, Colorado?

A Right.

Q Places all around the country; right?

A Right.

Q Did Mr. Cahn generally have a typewriter with him, to your knowledge?

A No.

Q Did Mr. Cahn carry around claim forms, to your knowledge?

A No.

Q Did you have a checkbook for the NDAA with you in these various cities around the country?

A No.

Q So Mr. Cahn couldn't have gotten paid on any of these trips even if he had submitted a claim to you on site?

A No.

Q And for whose convenience -- withdrawn.

Would it be fair to say that it was really for mutual convenience that these claims were mailed by Cahn to you, whether he handed them to you or mailed them to you?

A Made no difference to me.

Q With regard to the payment of these claims, the testimony was that he mailed the claims each and every instance?

A To the best of my recollection.

Q Did you find it easier than walking the claim to New York or flying it to New York?

A Yes, substantially.

Q Now, you testified also that you didn't under-

stand all of the rules and regulations of the LEAA; is that correct?

A That's right.

Q In fact, the rules and regulations are somewhat voluminous; are they not?

A Absolutely.

Q But your testimony is, is it not, and your understanding of certain of the regulations of the LEAA was that they prohibited you from paying travel expenses out of LEAA funds, where you knew that those expenses were being paid by another entity?

MR. CAHN: Objection on the same ground.

Where are the regulations?

MR. DRUKER: Your Honor, I will offer this subject to connection. We are going to have somebody from LEAA to testify.

THE COURT: All right. Then I will let him answer.

A Yes.

Q Now, directing your attention again to Government's Exhibit 3-A in Evidence. There is a certification about two-thirds or three-quarters of the way down the page; is there not (handing to witness)?

A You mean the statement, "Claimant will be

reimbursed"?

Q No. About two-thirds down.

A "The above information is true and accurate"?

Q "True and accurate to the best of my knowledge," and I am not referring to dual compensation.

A Right.

Q And was that claim put on there by the National Center for Prosecution Management?

A Yes

Q Who signed it right underneath that?

A Bill Cahn.

Q And justover that, the items are private transportation, other items of transportation, and total transportation expenses; is that right?

A Yes. It is itemized.

Q Did you rely upon this certification in any way?

A Well, you rely upon this along with supporting documentation.

Q And with regard to the term, "compensation," on there, does that include the items 1 through 7 that are immediately above it?

MR. CAHN: At what time?

Q Or did it back then, in March 25, 1974?

A Our understanding, yes.

Q Now, per diem is a separate, distinct item; is it not? In other words, separate from hotel, from meals, from air fare?

A No. Per diem would include meals.

Q Would include meals. How about hotel?

A Per diem is how much you get to live on per day; room and board.

Q Substantive, so to speak?

A Yes.

Q And per diem, not documentation, is required; right? It's something that people get for assistance?

A My understanding was it wasn't before. It is now.

Q Now, Mr. Cahn asked you about the trip to Mexico in March of 1974, that being Government's Exhibit 3-A. I am not sure if that is in front of you now.

A I have it right here.

Q And there was some mention that a special authorization was sought for him to receive payment because the trip was to be taken outside the United States; is that right?

A Well, for everybody.

Q Did he tell you at any time prior to that trip, anything to the effect that he didn't need payment for it

because he was getting paid by the County for that same trip?

A Not that I recall.

MR. DRUKER: Thank you, Mr. Healy. I have no further questions.

THE COURT: Anything more?

MR. CAHN: Yes, sir.

RECROSS EXAMINATION

BY MR. CAHN:

Q Mr. Healy, as a Federal Prosecutor or a State's Attorney, did you travel on behalf of your jurisdiction?

A I can't recall an instance where I did.

Q Do you know of State's Attorneys or Federal Prosecutors that did?

MR. DRUKER: Object.

THE COURT: Overruled.

A Yes.

Q When they traveled on behalf of the jurisdiction, they were paid by their jurisdiction; were they not?

MR. DRUKER: If he knows.

A Yes.

Q And as you testified on cross-examination, you knew that I was doing work on behalf the County of Nassau at the time I was performing work for the National District Attorney's Association?

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MR.DRUKER: Going to object. I don't believe that was the testimony.

THE COURT: Well, he said Mr. Cahn was visiting jails in San Juan, as I recall.

MR. CAHN: I was conducting a jail investigation.

MR. DRUKER: Mr. Cahn told him that he was. He didn't testify.

THE COURT: What is the question?

(Whereupon, the question was read.)

A I knew he was talking to an investigator in SAn Francisco concerning a Nassau County investigation, yes.

Q And knowing that, you never asked whether the County of Nassau was paying for the trip to San Francisco?

MR. CAHN: Object.

THE COURT: I think it's repetition, but I will let him answer.

A No.

Q Now, this trust that you were talking about to Mr. Druker, the letters that you received, that applied to everyone who worked for the National District Attorney's Association; did it not?

A That's right.

Q And again, I ask you whether or not pursuant to your understanding of the LEAA regulations, and subject

to the connection which Mr. Druker said he was going to offer, whether the $40 a day, which is exhibited on Government's Exhibit 3-A, was a per diem, which was allowed to the Government, whether or not you spent it?

A To the best of my ability, that's right.

Q And there was no certification to the $40 by the defendant William Cahn?

MR. DRUKER: Again, repetition and irrelevant.

THE COURT: Sustained. You have been over that.

Q Now, Mr. Healy, I again -- may I ask you what your definition of compensation is?

A My definition. My definition covers everything: Expenses, on the form I have instituted everything, all cost, period.

Q But that is your opinion?

A Yes.

Q And did you tell us on cross-examination that compensation was a fee or an honorarium?

A No. I would include that in compensation.

Q I see.

A You asked me from my opinion?

Q Yes. Now, in March of 1974 or in 1974, insofar as the LEAA regulations are concerned, when they talked of

compensation, was it your interpretation that it meant reimbursement for traveling expenses?

A Yes. We pretty much take that attitude. Yes, it covers everything.

Q And has there ever been changes in the forms of vouchers since that time relating to the compensation and reimbursement?

MR. DRUKER: Objection as repetition.

THE COURT: Overruled.

A You mean the forms that we put out?

Q Yes.

A I assume so. We are constantly changing them, yes.

Q Now, you said that it was your interpretation of the LEAA regulations which prevent payment of the travel expenses by the County and by a LEAA funded organization; is that correct?

A Yes.

Q If the LEAA funds were used to repay an advance by the County, would that be in violation of the LEAA regulations?

MR. DRUKER: I am going to object, your Honor.

A You mean you got your money beforehand from the County, went on a LEAA trip, and asked for reimbursement for

expenses?

Q And repaid the County.

A Would you substitute that bill as compensation?

Q Yes.

A I wouldn't substitute that bill.

THE COURT: Overruled.

Q And your interpretation of LEAA regulations, would it be of any interest to you how the repayment to the County was paid?

A No.

MR. CAHN: No further questions.

THE COURT: Mr. Druker, I don't think you have asked for Exhibits 50 to 54 to be marked in Evidence. Are you offering these while Mr. Healy is here?

MR. DRUKER: Not at this time.

THE COURT: You are excused, Mr. Healy. Thank you.

(Witness excused.)

* * *

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U.S. DISTRICT COURT E.D. N.Y.
MAY 21 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

-against- : No.75 CR 645

WILLIAM CAHN, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

May 4, 1976
10:00 O'clock A.M.

B e f o r e :

HON. ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript of my stenographic notes.

PERRY AUERBACH
Acting Official Court Reporter

PA/LH
1/1

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APPEARANCES:

DAVID G. TRAGER, ESQ.,
United States Attorney
for Eastern District of New York

BY: JAMES DRUKER, ESQ.,
THOMAS SCLAFANI, ESQ.,
and
PETER GOLDMAN, ESQ.,
Assistant US Attorneys

WILLIAM CAHN, ESQ.,
Appearing pro se

NEIL CAHN, ESQ., and
HAROLD BOGIN, ESQ.,
Attorneys for Defendant

JOSEPH E. SPINNATO, called as a witness, having first been duly sworn by a Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Joseph E. Spinnato.

THE COURT: Spell your name out.

THE WITNESS: Last name, S-p-i-n-n-a-t-o, Joseph E.

THE COURT: Go ahead, Mr. Druker.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Spinnato, would you state your place and nature of your employment?

A Special Assistant Attorney General to the Special Prosecutor's Office for Nursing Homes.

Q For the State of New York?

A For the State of New York.

Q How long have you been so engaged?

A A little more than a month.

Q Prior to that you were with the Nassau County Attorney's Office?

A Yes.

Q Prior to that you were an Assistant Attorney in Nassau County; is that correct?

A That's right.

Q For how long a period of time?

A Approximately nine years.

Q And do you know the defendant, William Cahn, seated at my right?

A Yes, sir, I do.

Q Was he District Attorney during the entire period of your tenure?

A Yes, sir.

Q And when did you come into the office, approximately?

A I believe my official starting date was January 1st, 1966, but I was in the office for three or four months prior to that as an Assistant.

Q And in January of 1966 you became an Assistant District Attorney; right, or thereabouts?

A Well, actually I had become an Assistant District Attorney in October of 1965, but the County did not recognize that appointment until January 1st of 1966.

Q At that time, did you become Chief of Rackets Bureau in the District Attorney's Office?

A Yes.

Q When was that, roughly?

A In late 1970 or early '71.

Q And did you serve in that capacity until you left the District Attorney's Office at the end of 1974?

A Yes, sir.

Q Now, just generally, as head of the Rackets Bureau, what were your duties and responsibilities, briefly if you would?

A The investigation, presentation to Grand Juries and prosecution of members of syndicated organized crime, and related figures.

Q And --

MR. CAHN: Mr. Druker -- may we approach the side bar for a moment, your Honor.

THE COURT: All right.

(Whereupon, a side bar was held as follows:)

MR. CAHN: I hate to press this issue, but on numerous occasions, Mr. Spinnato was questioned by Mr. Todos (Phonetic), and there may be a serious question of differences, of interpretation of what Mr. Spinnato said or what his testimony was, and I think that properly, that Mr. Todos be excluded.

THE COURT: All right.

(Whereupon, the side bar was concluded.)

BY MR. DRUKER:

Q Now, Mr. Spinnato, did you in time become close with the District Attorney, Mr. Cahn, if you would?

A Yes, sir.

Q Did you become good friends as well as business associates?

A Yes, sir.

Q And would it be fair to say that you are a confidant of his?

A Yes, sir.

Q You traveled together extensively; is that right?

A Yes.

Q Did you also socialize together from time to time?

A Yes.

Q Now, did there come occasions when you traveled pursuant to Nassau County business?

A Yes.

Q And on most of these occasions did the District Attorney accompany you or did you accompany him?

A I accompanied him.

Q Approximately 1970 to 1974, how many trips did you take outside New York State with him?

A I would say in a four year period perhaps it's an approximation --

Q Just an estimate?

A 25, maybe more.

Q Were there times when you traveled with Mr. Cahn in conjunction with non-Nassau County business? For example, for meetings or other assemblies of the National District Attorney's Association or the National College of District Attorneys?

A All of those, yes.

Q Seminars, panel convenings and the like?

A Yes.

Q Was there also times when you traveled on dual business when there was some County business and some business for outside entities?

A Yes.

Q Sir, in general, when you would travel on County business with Mr. Cahn, when you returned, would you submit some sort of a claim or voucher seeking reimbursement from your travel expenses?

A No. Not usually.

Q Did you generally pay for your travel when you were away with Mr. Cahn?

A No.

Q Who paid for them?

A Mr. Cahn.

Q And to your knowledge, who submitted the claims to the County for travel expenses?

A I would assume Mr. Cahn.

Q When you traveled, were other sources such as the National College for District Attorneys or the National District Attorney's Association, did you ever submit claims to them for reimbursement?

A Yes.

Q Did you prepare these claims or did someone else prepare them on your behalf?

A No. A secretary would have normally prepared them.

Q Whose secretary in the ordinary course of business?

A To the best of my recollection, both Mr. Cahn's and perhaps one or two occasions my secretary.

Q On those occasions when you would travel on a National College or National District Attorney's business while you were away, would you pay your own expenses or would Mr. Cahn pay your expenses?

A I would have to say most every instance it was Mr. Cahn who paid.

Q Then a letter would be prepared and you signed it?

A Yes.

Q In the ordinary and usual course of business, would a check come in in payment of the claim?

A Yes.

Q And would you see those checks?

A Yes.

Q And would you describe the procedure that would be followed with regard to endorsements of the checks from the time they came in the District Attorney's Office, to your knowledge, until the time you got the money, if any?

A Well, normally I would be advised by someone in the office that a check had come in that was made payable to me. I would then either go up to the front office or the check was brought down to me in my office, at which time I would endorse the check in the manner in which it was made out to me.

Q When you say, "The front office," would that be in Mr. Cahn's office?

A Yes, sir.

Q And when you say that on some occasions, someone would bring the check down to you, who would that be, in general?

A I recall it being Mr. Walter Vouins (phonetic).

Q Who is he?

A Mr. Vouins was an employee of the Nassau DA's office. I don't know his exact title, but I believe his function was a personnel aid and chauffeur and bodyguard to Mr. Cahn.

Q Now, on any occasions, on any of those occasions, did you receive honorariums from these various organizations?

A Yes.

Q This would be over and would have whatever travel expenses were involved; is that right?

A That's right.

Q Sometimes $100, sometimes $135; in that neighborhood?

A Yes.

Q And with regard to the monies, once the checks were cashed, would you receive any of the monies either for the travel expenses or the honorariums or both?

A I would receive what was -- what I was told was the consutant's fee or the honorarium. That was usually $100. On one occasion, to the best of my recollection, it was $135.

Q You wouldn't receive any of the other monies from the travel expenses?

A No, sir.

Q Now, on any occasions in which you signed claims or endorsed the checks, did you also fill out any County claims for your travel expenses?

A No, sir.

Q Were you aware whether or not Mr. Cahn was filling out claims on your behalf for your travel expenses to the County, in addition to the claims that were being submitted to the National College of District Attorneys or the National District Attorney's Association?

A No, sir.

Q Did Mr. Cahn ever ask your permission to submit claims to two different entities under your name or on your behalf for the same travel expense items?

A No, sir.

Q Now, I am going to show you four documents, Government's Exhibit 2A, and I believe the others are 37, 38 and 39 for identification. (Handing to witness.)

With regard to Government's Exhibit 2A, would you tell the jury what this is?

A The entire exhibit?

Q Yes, sir. Just generally describe it.

A It's a letter to Mr. Patrick Healy, the Executive Director of the National District Attorney's

Association signed by Mr. Cahn.

Q And it's for travel expenses, is it not, incurred by Mr. Cahn and yourself on a trip?

A I don't believe so, Mr. Druker.

MR. DRUKER: I am sorry. I have 12A here. My apologies. May I have a moment, your Honor?

THE COURT: Yes.

Q We will try again, Mr. Spinnato. Showing you now Government's Exhibit 2A, I will ask if that's a claim for travel expenses incurred by you on a trip to San Francisco (handing to witness.)

A It is a claim for expenses, yes, signed by me.

Q And did you dictate that claim or give the information to your secretary?

A I don't believe so.

Q Did you fill out the claim or have any hand in filling out the claim, other than signing it?

A I don't believe so.

Q It was presented to you and you signed it?

A Yes.

Q Did that relate to a trip on or about November 10th, 1974?

A Yes.

Q Examining the following documents, did checks

subsequently come in for payment of that claim?

A Yes, sir.

(Continued on next page)

Q And were you asked to endorse that check in the ordinary course of business?

A Yes.

Q And did you receive any of the proceeds from that, to your knowledge?

A To the best of my knowledge, I received $135 as a consultant's fee.

Q Out of how much?

A $277.73.

Q I am going to show you Government's Exhibit 2 in evidence, which is a claim filed with the Controller of Nassau County, and I will ask if prior to the investigation of this case you ever saw that claim? (Handing to witness.)

A No, sir.

Q Did Mr. Cahn tell you that he was submitting that claim for your travel expenses at anytime prior to the investigation of this matter?

A No, sir.

Q Did he ask your permission to do it?

A No.

MR. DRUKER: Your Honor, I am going to offer Government's Exhibit 2A for identification into evidence after showing it to Mr. Cahn.

MR. CAHN: I have no objection.

THE COURT: Mark it, please.

THE CLERK: Government's 2A marked in evidence.

Q The next document which you have in front of you is 37, I believe, for identification?

A Yes.

Q What is that, generally?

A It is a letter to the National College of District Attorneys from Mr. Cahn with respect to expenses for both himself and me for a seminar in San Antonio, Texas.

Q On the second page in the left-hand bottom part there, there is a writing which says, "W.C.:," and I think, "G.C.M."?

A G.M.M.

Q Who is G.M.M., if you know?

A I would assume it to be Mrs. Maston.

Q That would be Gladys Maston?

A Yes.

Q Who is she?

A She was Mr. Cahn's secretary while he was District Attorney.

Q Would you recognize the handwriting on that letter?

A Yes.

Q Who is it?

A Mr. Cahn.

Q That was a claim for reimbursement for yourself and Mr. Cahn from a trip to where?

A San Antonio, Texas.

Q Were you asked to fill out the claim and sign anything or did Mr. Cahn send the claim in your behalf?

A I don't know if there was a claim.

Q The letter?

A I did not send it, no.

Q Subsequently, did you receive any correspondence or anything else from the National College of District Attorneys?

A Yes. There is a letter dated December 7th of 1973 to me from Mr. Freteda (phonetic) who at that time was the acting Dean of the college.

Q Did you receive a check with that or did a check come with that, to your knowledge?

A A check did come, ultimately.

Q Were you asked to sign it?

A Yes.

Q Did you endorse it?

A Yes.

Q What happened to the check after that, to your knowledge?

A I believe it was cashed by somebody other than myself.

Q Did you receive any of the proceeds from that check?

A Yes, I did.

Q How much?

A $100.

Q Out of how much total?

A $354.27.

Q I am going to show you now Government's 37 in evidence. I will ask you to take a look at that and tell the jury whether or not you ever saw that document prior to the investigation of this case? (Handing to witness.)

A I don't believe so, no.

Q Did Mr. Cahn, prior to the investigation in this matter, tell you at anytime that he was submitting a claim to the County on your behalf, in addition to the claims to the National College?

A Could you repeat just the first part of that question?

Q Did Mr. Cahn, at anytime prior to this investigation, tell you in addition to the claim for your

travel expenses that he was submitting to the National College a claim to the Nassau County Controller?

A Yes.

Q He did tell you that?

A Prior to the start of this investigation?

Q Yes, sir.

A I believe the first time he told me about it was sometime in the Spring or Summer of 1974.

Q He told you that he had been billing two different entities for your expenses?

A I am sorry. I misunderstood your question. You told me --

Q My question was, prior to the investigation of this matter, did Mr. Cahn tell you that he, with regard to Government's 37 for identification or 37A, he was submitting a claim to both the Nassau County Controller and to the National College for District Attorneys in each of which he sought reimbursement for your travel expenses?

A No, sir.

Q Did he ask your permission at anytime to bill more than one entity for your travel expenses?

A No, sir.

MR. DRUKER: Your Honor, I will offer Government's 37A for identification into evidence.

MR. CAHN: No objection.

THE COURT: Let it be marked.

THE CLERK: So marked.

Q Now, Mr. Spinnato, you have now before you Government's 38A for identification; is that correct?

A Yes, sir.

Q What is that?

A In part it is a letter again to Mr. Freteda (Phonetic), the acting dean of the college, signed by Mr. Cahn with respect to expenses for both he and myself for an organized crime seminar in Atlanta.

Q And do you remember when that seminar was?

A Offhand, no, I don't.

Q Would the dates December 9th and 10th of 1973 refresh your recollection?

A Yes. Yes, that would be about it.

Q Now, did you receive any payments or any check pursuant to that claim or letter?

A Yes. I received -- a check was issued to my name on December 18th of '73.

Q Was there a letter addressed to you also by Mr. Fretedo (phonetic) again?

A Yes.

Q And in the ordinary and usual course of

business in the District Attorney's office, did correspondence get routed directly to the addressee or more specifically to you?

A Eventually?

Q But --

A Initially.

Q Did it come right to you or was it a routing system?

A No. There was a routing system.

Q What was that, if you recall?

A Well, it came from the front office to the District Attorney's office, and then it was given to the Chief, I believe at the time the Chief Assistant District Attorney who then went through it and had it delivered to whoever the letter was to.

Q And with regard to the checks was that procedure followed or some other procedure?

A I don't recall if procedure was followed with regard to these other documents.

Q With regard to the checks that are included in 37A for identification, did you endorse that check?

A Yes.

Q And did you receive any of the proceeds from that check?

A Yes, sir, $100.

Q Out of how much?

A $269.27.

Q And prior to the commencement of this investigation, did Mr. Cahn ask your permission at anytime to bill the County and the National College of District Attorneys for your travel expenses for that trip to Atlanta?

A No, sir.

Q Did he tell you at anytime prior to this investigation that he was billing two entities for the same travel expenses in your name?

A No, sir.

Q And did you know from any other source that he was billing the County as well as the outside association using your name back at the time that this was taking place?

A No, sir.

MR. DRUKER: Your Honor, I will offer Government's 38A into evidence.

THE COURT: Any objection, Mr. Cahn?

MR. CAHN: No.

THE COURT: Let it be marked. I have a matter at 2:00 o'clock. We will have an adjournment now. Don't talk about the case among yourselves. Don't talk about it to anybody else or

let anybody else talk to you about it. Don't see if there's anything in the newspapers about it, and don't talk at all to any of the personnel in the courtroom.

I will see at 2:30 or thereabouts.

You are excused until then.

THE WITNESS: Yes, sir.

(Whereupon, the jury left the courtroom at 1:10 p.m.)

LH 1PM/1

AFTERNOON SESSION

(Time noted: 2:45 O'clock P.M.)

THE COURT: Are we all ready on the Cahn case?

MR. DRUKER: Yes, your Honor.

THE COURT: Bring in the jury.

(Whereupon, the jury entered the courtroom.)

THE COURT: All right, Mr. Druker, you can continue.

JOSEPH E. SPINNATO, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

DIRECT EXAMINATION

BY MR. DRUKER CONTINUED:

Q Mr. Spinnato, before you now is Government's 39A for identification, and I will ask you to take a moment to look through these documents. (Handing to witness.) And generally, sir, what are those documents or what do they purport to be from the writings thereon?

A There are two claims for payment or reimbursement. They're claim forms of the National College of District Attorney's in Houston, and one is made out in the name of William Cahn and one is made out in my name.

Q And what is the period of that trip; do you

recall? The period covered by those claims?

A Reading from the document?

Q Yes, sir.

A It's May 5, 1974 to May 8th, 1974.

Q And this was a trip that you made with Mr. Cahn?

A Yes, sir.

Q Where was it to, if you recall?

A San Francisco, California.

Q Now, was a check sent to your knowledge, pursuant to the claims in the name of Joseph Spinnato?

A This is a check made out dated June 4, 1974, to Joseph E. Spinnato.

Q Would you take a look at the back of that check, please -- a photocopy of the check. Do you see the name Joseph Spinnato on there?

A There is Joseph Spinnato back there.

Q Is that your signature?

A No, sir.

Q Do you recall ever seeing that check before?

A No, sir.

Q Did you authorize anyone in the District Attorney's office to sign your name to any check?

A No, sir.

Q Did you authorize anyway with regard to that trip to submit any claims or to submit claims to more than one entity on your behalf for your travel expenses?

A No.

Q Did the defendant, William Cahn, ask your permission with regard to that trip to make claims to more than one entity with regard to your travel expense?

A No, sir.

Q To the best of your recollection, did you receive any of the proceeds from that check you are now looking at?

A My best recollection, Mr. Druker, is that each time I performed a function for either the National College of District Attorneys or the National District Attorney's Association, I received either $100 or on one occasion $135 as the consultant fee or the honorarium, whatever you want to call it. I have no specific recollection of receiving this money on this occasion.

Q All right. Is it fair to say then that you might have received the money but your best recollection is that you didn't? Is that a fair statement?

A I think a fair statement would be I just can't recall.

Q You have no recollection whatsoever of receiving

or not receiving any of the proceeds of that check; is that correct?

A That's right.

MR. DRUKER: Your Honor, I am going to withhold the offer until I have another witness on this. I have no further questions.

THE COURT: Any cross-examination, Mr. Cahn.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Spinnato, you told the Court and the jury that you came into the office as an Assistant District Attorney in October of 1965 but didn't start to get paid until January of '66; is that correct?

A Yes, sir.

Q Now, a lawsuit was started by me on your behalf because of your salary?

A Myself as well as other Assistant District Attorneys.

Q And you served from October to December as an Assistant District Attorney but without compensation?

A That is correct.

Q And thereafter, you were assigned to the Rackets Bureau; were you not?

A Yes.

Q How long did you serve in the Rackets Bureau?

A My best recollection is that I was assigned to the Records Bureau about two or three months after I started in the District Attorney's Office.

Q And you were in the Rackets Bureau from that time until December -- through December of 1974; is that correct?

A Correct.

Q And Mr. Druker asked if you became a confidant of mine?

A Yes.

Q Then you answered, "Yes"?

A I believed myself to be one.

Q Would you tell the Court and jury what you believed a confidant of mine was?

A I would say that I became involved in a majority of the operations of the office; special cases or investigations that may have come to light within the office. Generally along those lines.

Q And as such, you were privy to all matters that were involved with the District Attorney and the District Attorney's office?

A All?

Q Yes.

A No.

Q And is it not true, Mr. Spinnato, that even on some of the trips on which you accompanied me, you were not privy to all of the information that was involved in those trips?

MR. DRUKER: I am going to object. If he didn't know something, how can he testify to what he didn't know. He can testify to what he did know.

THE COURT: It's an involved question. I will let him answer it.

THE WITNESS: I am sorry, would you repeat the question, please.

(Whereupon, the question was read.)

A Yes. That's correct.

Q As a matter of fact, there were many discussions between you and me about the facts that you didn't have the certain information; was there not?

A Oh, yes, I would say, yes.

Q Now, I am going to show you Exhibits 1 through 46, Mr. Spinnato, and the various letters attached to those exhibits, and if you will, could you from the exhibit, more specifically the claims to the County, advise us which trips

you accompanied me on and if it involved the exhibit. Let me make myself clear. Please read the exhibits 1 through 46, and each time would you advise the Court and jury you were on that particular trip. (Handing to witness.)

A On Exhibit No. -- Government's Exhibit 1, I was on that trip.

MR. DRUKER: Your Honor, if it might save time, the Government would either stipulate that either Mr. Spinnato was on every trip or that there is not contention here that Mr. Spinnato was not on every trip.

THE COURT: Isn't there?

MR. CAHN: I will accept that stipulation, yes, sir. That is fine.

Q Now, on all of these trips designated in 1, Government's Exhibit 1 through 46, in which your name appears Mr. Spinnato, did you have one penny's worth of expense?

A My answer to that, Mr. Cahn, is that except in rare instances, all of the expenses on those trips -- I am not certain which trips they are, because I did not look through all the exhibits, but as a general rule with rare expenses on each of these trips, the expenses were paid by yourself.

Q And you didn't have any expenses?

A Other than personal and incidental?

Q Other than personal.

A I would have to say no.

Q And therefore, there would be no reimbursement to you of expenses?

A No.

Q And specifically, this includes 2A, 37A, 38A and 39A. (Handing to witness.)

A Right.

Q You had no expense?

A No.

Q So there was nothing coming back to you?

A In the form of expense, no.

Q Right. And you testified that in each time you participated in a National College of District Attorneys' Seminar, you, to the best of your recollection, remember receiving an honorarium or a consultant's fee or what have you; a form in that --

A Correct.

Q And that was in the amount of $100 or in one instance $135?

A Yes, sir.

Q And specifically with 39 -- Government's

Exhibit 39A for identification, where you stated that that is not your signature, could I refresh your recollection Mr. Spinnato as to a telephone call when you were ill at home and I informed you that a check came in, and would you mind if I signed your name as endorsee, and you jokingly said, "Yes, sir. But I will charge you with forgery"?

A I honestly don't recall that conversation.

Q Fine. Do you care to look at it?

A I am trying to determine if in fact I was home ill at that time, and this doesn't refresh my recollection.

Q But in any event, even on Government's Exhibit 39A, you had no expenses?

A No, sir.

Q You testified, Mr. Spinnato, that you didn't know that I was submitting a bill to the County for expenses of mine which were all reimbursed by the National College; or yours?

A Correct.

Q Also, you had no expenses, they were my expenses for you; were they not?

A Yes, sir.

Q And you didn't know that until when?

A I would say it was either February or March of 1975. Around there sometime, to the best of my recollection.

Q February or March of '75, after we left the District Attorney's Office?

A Would you ask me the first question again as to what it was that I found out.

Q When did you first learn that I was submitting bills to the County and to the National District Attorney's Association or the National College allegedly for the same expenses?

MR. DRUKER: On whose name does this cover, or just with regard to the one with Mr. Spinnato's name.

THE COURT: I think it is general now.

Q Generally.

A Generally, I would say again, approximating sometime in either the late Spring or Summer months of 1974.

Q And more specifically, in reference supposedly to expenses that I incurred on your behalf, would that be about the same time as well?

A No.

Q When was that?

A Again, approximating, to the best of my recollection it was either March -- I am sorry -- February or -- it was in the early part of 1975.

Q Okay.

Mr. Cahn, I ask that be marked for identification.

30a Spinnato-cross

THE COURT: All right, give them to the Clerk, please.

THE CLERK: Set of documents marked Defendant's Exhibit C for identification.

(Continued on next page)

Q Now, you testified on direct examination, Mr. Spinnato, that you traveled on County business as well as business for the National College of District Attorney's Association and we traveled together?

A Yes, sir.

Q And that involved various cases within the office of District Attorney?

A Yes.

Q Did it also involve an informant?

A Oh, yes.

Q I show you People's Exhibit C for identification --

MR. DRUKER: It is not People's Exhibit.

MR. CAHN: Excuse me. Defendant's Exhibit C for identification.

MR. DRUKER: And Number 2, I think this is in direct contravention of your Honor's explicit rule.

THE COURT: Let's see what they are.

MR. DRUKER: May we do it at the side bar?

THE COURT: Come to the side bar.

(Whereupon, a side bar discussion was held as follows:)

THE COURT: This is the defense case.

MR. CAHN: Your Honor, Mr. Druker, by the

introduction of these prior similar acts, based upon my opening, has indicated to your Honor that he put in those acts to allude to a particular intent or motive on my part. I now believe that Mr. Druker has opened the door to whatever purpose the payments and the receipts of payments from these various organizations alluded to.

MR. DRUKER: Those prior similar acts, I submit, were admissible even without Mr. Cahn's opening. The door was not opened to this. I think this was -- I put this witness on in the assumption we wouldn't get into this.

THE COURT: I think this was not for a defense case.

MR. CAHN: May I have Mr. Spinnato identify them at this time?

THE COURT: Where are the originals?

MR. CAHN: They have been stolen.

THE COURT: Was he present when they were stolen?

MR. CAHN: No.

THE COURT: I am not going to go into that at this stage.

MR. CAHN: I don't intend to, your Honor. All

I intend to do is to have him identify the fact that these are affidavits. I won't even go into that. They are copies of affidavits which he signed, and he signed the original at approximately the dates that they are in, and I will let it go at that.

MR. DRUKER: This is the old story about the camel. I object. Mr. Spinnato is available. I'm trying to keep the Government's case from any of the reference to the affidavits or the Sam Houston issues. It is still the Government's position, not in the defense. If it goes on, it goes on as a defense.

THE COURT: Mr. Spinnato was asked only about the Exhibit 2 and 37 and 38.

MR. DRUKER: Absolutely.

MR. CAHN: He was asked about trips that he made with me. He was asked about being a confidant of mine, and I certainly have the right to go into the business of confidences.

THE COURT: Not on cross-examination. You do it on the defense case.

MR. CAHN: Forgive me for my ignorance of the procedure. Then can I ask your Honor to request the return of Joseph Spinnato for Monday, May 18th?

THE COURT: There is no problem in getting him back.

MR. DRUKER: No objection.

MR. CAHN: I know there is no problem. There is a problem as far as his employer is concerned.

MR. DRUKER: You could give him a subpoenae while he is here. I have no objection to any procedure that's amenable to the Court.

(Whereupon, the side bar was concluded.)

BY MR. CAHN:

Q Mr. Spinnato, with reference to Government's Exhibit 2A, do you remember whether or not when you signed -- and that is your signature; is it not?

A Yes.

Q When you signed this particular exhibit, did you sign it with the amount $135 on it or $100. (Handing to witness.)

A I believe it was $100.

Q As a matter of fact, were you not surprised when you received $135?

A As the honorarium?

Q Yes.

A Yes.

Q You were?

A Yes.

Q So that was not assigned by you. That was not done by you crossing out the $100 and making it $135?

A No, sir.

Q And when you signed it, it was $100?

A To the best of my recollection.

Q In reference to Government's Exhibit 38, did you sign any claim for that at all? (Handing to witness.)

A Well, there is no claim form in this exhibit, and I don't recall whether or not I did.

Q And in reference to Government's Exhibit 37A, did you sign any claim form (handing to witness)?

A I would have to answer that question in the same way. There is no claim form here, and I don't have any independent recollection of ever signing it.

Q After showing you Government's Exhibit 2A in evidence and 39A for identification, I ask you if the claim forms you have signed are the same -- I will withdraw the question. I ask you if the claim form which you signed in 2A, Government's Exhibit 2A is the same as the claim form as Exhibited in 39A for identification (handing to witness)?

A You mean is the form, itself, the same?

Q Yes.

A No. As they are different.

Q Are they both from the National College of District Attorneys?

A Yes.

Q Mr. Spinnato, you knew, did you not, that I was submitting a claim to the County for your travel expenses?

A Yes. On occasion I would have to --

MR. DRUKER: Are we talking with regard to the checks in 2, 37 and 39 or are we talking about other trips? There may be a distinction.

THE COURT: All right.

Q When we traveled together on behalf of the County?

A Yes.

Q You knew that I was submitting travel expenses for the expenses that I incurred on your behalf; did you not?

A I would have to have known that. I mean, you expended the monies. There would have to be some way of getting it back.

Q Yes.

MR. CAHN: Just one moment, your Honor.

(Whereupon, Mr. Cahn walked over to the defense table.)

MR. CAHN: No further questions.

THE COURT: Is there any redirect?

MR. DRUKER: No, your Honor.

THE COURT: You are excused for now, Mr. Spinnato. I would like you to be available.

THE WITNESS: Your Honor, I of course will be available. There may be some problem with my new duties in that they take me around the State of New York.

THE COURT: Yes. Well, can you keep --

THE WITNESS: If I could have some sort of indication of when?

THE COURT: Possibly on Monday, the 10th, but suppose you call Mr. Druker and inform him of where you are going to be.

MR. CAHN: I will make it known to the witness; May 10th.

THE COURT: You can be here?

THE WITNESS: Yes.

THE COURT: Thank you.

(Whereupon, the witness was excused.)

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
JOSEPH SPINNATO	3	24		

GOVERNMENT EXHIBIT'S	DESCRIPTION	FOR ID.	IN EV.
2A	Document		13
37A	Documents and checks		16
38A	Letter		19

DEFENDANT'S			
C	Set of Documents	30a	

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645

WILLIAM CAHN, :

Defendant. :

----------x

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
MAY 21 1976
TIME A.M.
P.M.

United States Courthouse
Brooklyn, New York

May 4, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is
a true and accurate transcription of my
stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
THOMAS SCLAFANI, ESQ.
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGLN, ESQ.
Attorneys for Defendant

MR. DRUKER: The Government calls Mr. Dennis Debrowski, D-e-b-r-o-w-s-k-i.

D E N N I S D E B R O W S K I , having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: Can we have your name, please.

THE WITNESS: Dennis Debrowski.

THE COURT: All right. Go ahead, Mr. Druker.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Debrowski, would you tell the jury the place and nature of your present employment?

A I work for the U.S. Department of Justice, Law Enforcement Assistance Administration in New York, 26 Federal Plaza. I am the chief of the financial management division.

Q And prior to that, where were you employed, sir?

A I worked for the U.S. Department of Defense as an auditor for four and a half years, and prior to that I was with Arthur Young Company, Certified Public Accountants in Newark for two years.

Q And you recently passed the CPA exam?

A Yes.

Q In the State of New Jersey?

A Yes.

Q And what are your duties and responsibilities

with the LEAA?

A I am in charge of the division of six people. Our primary function is to maintain control of the federal funds provided in state and local government to fight crime. I am responsible for financial interpretations, responsible for monitoring in effect one or two day audits on sight to see whether the grantees and subgrantees are spending the federal funds in accordance with the legislation.

Q Now, the jury has heard a good deal of talk about LEAA. Would you tell us what it is; what its purposes are and what it does?

A Basically, LEAA is a funding agency of the United States Department of Justice. The prime function is to provide federal funds to state and local government to fight crime and improve the criminal justice system. It is a very limited fund when you compare it to the state and local expenditures for criminal justice and law enforcement, and the legislation calls for new and innovative demonstration research type products. In sufficient funds to provide salary increases for police personnel for justice, to replace police officers' salaries with federal funds that were previously state or local funded. For example, New York this year only gets $34,000,000 for the entire state. So, with, I guess, a $2-billion criminal justice budget, it's

a very small portion o f the expenditures.

Q Now, is it one of the aims of the LEAA to replace state funds or to give the state and local authorities moneys where states or local authorities already have money available?

A There's a statutory provision, Section 303A12, which provides federal funds to increase, rather than supplant or replace state and local funds that are available in the absence of the federal funds.

In other words, you can't take federal funds and use it for purposes that the state would normally budget and expend those funds.

Q Now, there has been some talk or testimony, I should say, about grants to various organizations; LEAA grants, more specifically. Are you familiar with, in general, grants to private associations?

A LEAA can make grants to state and local law enforcement agencies, to private non-profit organizations, to colleges and universities. Generally, it's through state agencies, but it can be to any type, as long as it's consistent with the legislation as being criminal justice crime fighting nature.

Q Now, with regard to these grants, are there any LEAA or federal policies or guidelines that govern the

spending of these LEAA moneys by the grantees?

A Yes. Well, the legislation certainly provides specific areas in which funds can be spent or not spent. For example, legislation has a limitation of one-third of any grant which can be used for police or regular law enforcement personnel, because of the facts that their funds are so limited that they didn't want all to be spent on, for example, police salaries. When the legislation has been met, then there is the federal circumstances like in particular, 74-4, which is applicable to state and local government, and this particular provision, in effect, the financial bible for all state and local non-profit expenditures, it describes the costs that are allowable; the costs that require prior federal government approval, and costs which are specifically unallowable.

Q And this guideline of the book referred to as the bible, is that in front of you now?

A Yes. It's incorporated in here. The legislation authorizes LEAA to write whatever specific financial regulations, policies and procedures that it feels are necessary to meet the legislative intent. The legislation, itself, was relatively short. I guess it's less than twenty pages, and from that part of the volume of financial data, legal opinions, guideline matters and so on,

but as I am concerned primarily with the financial aspect, the financial guide is an expansion of the legislation, and this federal management circular, 94-4.

Q Does this book or guideline purport to be complete in that it covers every conceivable financial situation which might arise?

A No. The first page of the guideline makes a specific statements --

MR. CAHN: Objection.

THE COURT: Overruled. You may answer.

A The manual states "No manual could properly address all fiscal administration problems and needs reasonably expected to arise ina Title 1 program."

Title 1 relates to the state and local government.

Q Accordingly, you are called, and you and others in your office give interpretations of these rules and regulations?

A Yes. Within my position, described as the chief of the division, it's a specific item I have to provide what's considered. Financial interpretations or expert financial advice to state, local, non-profit and any individual who will be utilizing, expending LEAA funds. We have to provide them with guidance, because while the basic

principles are provided in legislation in the federal management circular, and the manual, you can't possibly come up with every conceivable expenditure or situation.

Q Is it frequent or infrequent you receive requests for interpretations of the rules and regulations?

A Every day we get numerous calls, phone calls, a request for written opinions and discussions with state and local agencies. We have conducted several financial conferences for the state and local agencies on sight, because of the numerous questions, and we had a lot of specific ones that are never covered, and we address them to themselves. It's basic cost principles that are involved.

Q From time to time do you go out and address the grantees of the LEAA?

A Yes. We do what is called a financial monitoring, which is, in effect, a one or two day on-sight review of at least from our end the financial aspects of the way the grantee or subgrantee is spending the federal funds, to make sure, number one, it's consistent with the legislation; and number two, that it's consistent with the financial policies as prescribed in this guideline manual.

Q Now, from time to time, are you aware that individuals travel on behalf of the various grantees for different reasons and are paid or their expenses paid by the

grantees out of the LEAA funds?

A Yes.

Q And do the guidelines, regulations, and the "bible," as you referred to it, cover this?

A Yes. The federal management circular, as I said, is the basic principles, and says that travel costs while on official business are considered allowable.

MR. CAHN: Your Honor, again I think the regulation or the guidelines speak for itself. You asked before where is the guideline --

THE COURT: I think they are here, and should be given an opportunity to bring out what is in them.

MR. CAHN: I think that's the best evidence.

THE COURT: Let's proceed, and I will rule on other questions. I will allow this one.

Q Now, are there any policies or rules or regulations that you are aware of which either allow or prohibit a consultant or a lecturer traveling on behalf of LEAA grantee from receiving reimbursement for his travel expenses from both the grantee organization and from his home jurisdiction?

A Yes. As I would interpret this, it provides for funds that are cost may be reasonable, necessary and allocable --

Q Are there any specifics you refer to in arriving at in this interpretation?

A Yes. In this federal management circular -- if I can refer to it, a provision is there concerning applicable credits.

MR. DRUKER: First of all, perhaps we should mark this for identification.

THE COURT: Mark the entire volume and then the page in reference as A under that.

THE CLERK: Government's Exhibit 59 for identification. One page of this exhibit is Government's Exhibit 59-A for identification.

(So marked.)

Q Now, would you be good enough to point out the provision you started out to?

A Yes. As I mentioned, above it discusses expenses which must be reasonable, necessary and allocable to the particular grant program, in that of the applicable credits. Now, the applicable credits states here refers to those or reductions of expenditure type transactions which offset or reduce expense items allocable to grants as director in direct cost. We would use this as a basis for any type of p[illegible]ent that would previously be made in any area. In other words, if reimbursement was available

through the state, city, county, whatever it might be, then those credits would have to be applied first in order to be expenses to be charged to the federal grant.

Q And are there any other provisions which would either allow or prohibit the receipt of reimbursement for expenses from more than one source; one of the sources being LEAA funds?

A As I mentioned before, the statute calls for the federal funds to be used to increase rather than to supplant state and local funds. If the funds are budgeted by the state or local government for a particular time of expenditure, then we would not -- it would not be proper to charge those to the federal grant, because it would be a replacement of budget expenses. The other area would be the financial guide, which talks specifically about a dual compensation, salaries and wages.

Q Wehre are those provisions?

A That would be in the text of the financial guide under Charter 3, Paragraph 31-C, and it would be right here (indicating).

Q Could you circle in red the provision which you feel is pertinent to that point, and I might ask you to do the same thing with regard to the credits provision that you have just testified about.

A Okay. The provision says that in no case is dual compensation allowable. So we take this for its meaning, that compensation that's been previously received or that would be normally available under normal circumstances for the state, local, individual, whatever it is, once they receive reimbursement they could not charge the federal grant.

MR. DRUKER: I will ask that both these provisions be marked into evidence.

THE COURT: Is there any objection.

MR. CAHN: May I inquire.

MR. DRUKER: All right. I offer it for identification at this point, and when we have completed it, I will make an offer to all sections the witness is alluding to. Ithink the part contained is just in the parenthesis.

THE WITNESS: I would say so.

THE CLERK: Government Exhibit 59-B.

(So marked for identification.)

Q And sir, if you would similarly mark the applicable credits section you mentioned a minute ago (handing the document back to witness).

Now, in addition to that, are there any provisions to find the reasonableness of costs?

A Yes. Reasonableness of costs are generally

defined as what an ordinarily prudent person would do in like circumstances. In other words, to utilize what, whether it be their own funds or federal funds, in the manner which would be most cost beneficial to the program. In other words get the most for the dollar.

Q Is this spelled out any place within the guideline?

A Yes. There is a reference to this type of item in Charter 3, Paragraph 7 of the financial guide.

Q Would you mark that off or set that off with a red pen, please.

(Whereupon, the witness did as instructed.)

MR. DRUKER: May this be marked for identification.

THE CLERK: Government's Exhibit 59-C for identification.

(So marked.)

Q Now, with regard to the question I asked you before about an individual receiving reimbursement from both LEAA funds and his local entity, is there anything in the guidelines that says specifically "Thou cannot or you cannot receive reimbursement out of LEAA funds and from another jurisdiction" or is this a matter of interpretation of other regulations?

A For the salaries and wages, it's specific that no dual compensation is allowable. Using the applicable credit provision that says necessity of all credits would seem to be very specific, and we use that across the board for any type of expenditure, whether it be for salaries, equipment, purchases, travels, consultant fees, anything along those lines.

MR. CAHN: Object to the answer and move that it be stricken as not responsive to the question, itself.

THE COURT: Overruled.

Q Now, if you received a telephone call from an official or one of your grantees and he or she advised you that he or she had before him a claim in which a consultant for the project involved had claimed travel expenses related to the project, and that this consultant had also advised the grantee that he was getting reimbursed from his own county and they needed a ruling as to what to do. What would your decision be as to under the guidelines or regulations, whether it be allowable or not?

MR. CAHN: Objec t. Hypothetical and impertinent, so if your Honor rules as to my questions, I offer the same objection. It's a hypothetical.

THE COURT: Well, this is based on facts in the

case, and is put to the witness, who should give rulings, so I will allow it, but of course the interpretation is subjecttto your argument at the proper time.

MR. DRUKER: And also put to him asan expert, your Honor.

A (Continuing.) If I were called upon to answer that question, I would first of all refer to the non-supplanting provision we mentioned before of not replacing the state fund with federal funds.

Secondly, that the net applicable credits would apply as well; that if state funds are available -- state and local funds are available, they should be used first. If they are not available, and the expenditure is related to the purposes of a legislation and they're allowable costs, then they could be allowable.

(Continued next page.)

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Q And these regulations or rules are the Bible, at least with regard to those provisions, has been substantially the same since 19[illegible]?

A The Federal management circular had a prior name, which is OMB Circular A-87. The text is substantially identical. It's just a form change -- the Federal agency changed, so they named it with a new title, but I would say substantially it is identical.

Q When did that change take place?

A The original A-87 came out in 1968, and the format change came out in -- I believe it was -- I can't recall -- somewhere in 1973.

Q Now, did Mr. William Cahn ever call upon you or anybody else in the LEAA, to your knowledge, for any interpretation of these provisions which we have just discussed?

A Not to my knowledge.

Q Or asked for a ruling as to whether ornot it was permissible to be permitted to receive payments from LEAA grantees where the same items were being paid for by another agency?

A Not to my knowledge.

MR. DRUKER: With that, I offer the pertinent parts into evidence.

THE COURT: Mr. Cahn might want to cross-examine.

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MR. CAHN: Yes. Two questions, if I may.

VOIR DIRE

BY MR. CAHN:

Q Who received that, Mr. Dembrowski?

A Everyone who receives a federal grant from LEAA has a -- if I can just backtract a minute -- the application that request federal funds, includes a provision that the cost allowability not only of the legislation but of the federal management circular would be incorporated, so every grantee would be bound by these provisions, and I believe as a matter of course these are certainly outlines, as a package, as a financial guide --

Q To the grantees?

A Yes.

Q Now, if I may, hypotheticaly speaking, of the National College of District Attorneys, do you know that entity?

A Yes.

Q By the way, do you have anything to do with them?

A As I understand, the grant for the National College of District Attorneys, the awards are made from Washington, so we would not be directly involved in our New York Regional office.

Q Isn't it true that they're a private educational

institution; are they not?

A I am not familiar with the specifics of their charter.

Q Mr. dembrowski, what I am trying to understand is whether or not there are other regulations involving grants to others, other than municipal or state entities?

A There is a federal management circular, A-21, which is related to college and universities. The basic text of the federal management circular 74-4 as far as cost allowability, is substantially the same.

Q You know. You say "substantially," Mr. Dembrowski. We are dealing with a rather important matter here, so --

MR. DRUKER: I will object to any characterizations.

Q May I ask you, are you involved with grants, interpreting grants and legal regulations of grants and rules of grants that go to the colleges, universities or other private institutions?

A Yes.

Q You are?

A Yes.

Q And are you involved, specifically, with a grant to the National District Attorneys Association?

A No, I am not.

Q Are you involved, specifically, with a grant that has gone to the National College of District Attorneys?

A No, I am not.

Q Are you involved with the grant that has gone to the National Task Force on Police Standards?

A No.

Q You had nothing to do with that?

A No.

Q And this book, this group of regulations, A-something or other, or whatever it may be, this applies to grants that are involved with municipalities, state governments?

A It's involved with all grants, because every application, as I mentioned before, whether it's from state or local government or from non-profit organizations, the provision of the federal management circulars incorporated as part of the application. So, once it's signed, it becomes specific condiction of the grant.

Q I am talking now, specifically, of guideline manual, financial management for planning and action grants, dated April 30, 1973. Is that when this came into effect?

A No. It would have come out when the legislation came out, I guess in 1969, and this is the updated version of

the numerous amendments.

Q So there are differences in '70 -- April 29, 1973, back to '67. There are differences; are there?

A The differences are related to the legislative changes. The provisions of the federal management circular are unchanged.

Q There are differences?

A Because of legislation, yes. For example --

Q These guidelines and rules --

MR. DRUKER: Your Honor, might Mr. Cahn again question the witness from the lecturn?

THE COURT: I thought that you were going to have one or two questions. Go back and ask as much as you need.

MR. CAHN: Thank you.

May I have the last question?

(Question read.)

THE COURT: Go ahead.

Q This is an updated version of the financial management for planning and action grants prior to April 30, 1973, this particular book?

A I am sorry. I didn't quite get the full question.

THE COURT: The 1973 book is an update of the

earlier versions?

THE WITNESS: Yes, it is.

Q And --

A May I give an example of some of the updates?

Q No. It's perfectly all right. Thank you, Mr. Dembrowski.

Have you ever seen me before?

A No, I have not.

Q Am I a grantee or have I ever been a grantee of LEAA funds?

A Not that I know of.

Q And do you have any knowledge whatsoever, that I received a guideline manual or that I knew of any of these regulations?

A I don't know whether you received it or not.

MR. CAHN: Under those conditions, your Honor, and under the fact that this book is dated April 30, 1973, I offer strenuous objection on the admission of any such guidelines.

THE COURT: In the light of the statements that there are no substantial changes, and the fact that they are incorporated in the applications of the organizations of which you have been an officer, I am going to allow them. The jury can evaluate the extent

to which you may be bound by them.

MR. CAHN: Thank you very much, sir.

THE COURT: Let them be marked.

THE CLERK: That's Government's exhibit 59 A, B and C marked in evidence.

CONTINUED DIRECT EXAMINATION

BY MR. DRUKER:

Q Just two things, Mr. Dembrowski. One, are there any changes that were incorporated from the manual that was just marked into evidence from the prior ones which would have effected the interpretations that you have given earlier with regard to double-billing reimbursement or double compensation?

A No. The -- let's see. The federal management circular 74-4, as you will note in there, is dated 1968, and that's what is incorporated into the financial guide. There was no changes to that at all. In fact, the financial guide, itself, doesn't have the latest form change which now is described in 74-4.

Q So in these provisions that you have referred to which are now in evidence are unchanged from the predecessor volume?

A Unchanged, yes.

Q With regard to the National Police Task Force, the National Center of Prosecution Management, the National

23 College of District Attorneys, The National District Attorney's Association, are these grantees which are outside the New York area, governed by different regulations, different manuals than those which are under your auspices?

A No. Every application is the same application, whether it's in New York or whether it's in California. The application standard conditions are identical. We don't use a regionalized application. The conditions are nation-wide.

Q How about the manual? Is that regionalized?

A No, that's the same.

Q The same for every grantee?

A Same.

MR. DRUKER: Thank you.

THE COURT: Thank you, Mr. Dembrowski.

MR. CAHN: Your Honor?

THE COURT: Recross?

MR. CAHN: No. The other was voir dire.

THE COURT: I didn't understand you. Go ahead.

CROSS-EXAMINATION BY

MR. CAHN:

Q It's Mr. Dembrowski; is it not?

A Yes.

Q Mr. Dembrowski, are you an attorney?

A No.

Q Now, Mr. Dembrowski, you stated, did you not, that LEAA funds are used to perhaps foster new and innovative procedures in law enforcement. Are those the words you used?

A I believe, basically, yes.

Q And that's an important function of LEAA; is it not?

A Yes. The legislation is very broad and has numerous aspects, but some of the particular ones are new and innovativetype projects; research development, demonstration programs.

Q Now, you talked of a provision of dual compensation, and you pointed out the People's exhibit 59-B -- Government's 59-B in evidence. Would you read that to the jury, please?

A Yes. Grants, purposes and dual compensation. Charges of time, of state and local employees assigned to grant programs may be reimbursed or recognized, only to the extent that they are directly and exclusively related to the grant purposes, where proper, for inclusion in direct cost basis. In no case is dual compensation allowable. See note, that is an employee of a unit of the government may not receive compensation from his unit or agency of government, and from LEAA grantee or sub-grantee for work purportedly

performed during a single time period. For example, 1 p.m. to 5 p.m., even though such work may benefit such activities."

Q Now, what does dual compensation mean? What does compensation mean?

A Salaries and wages, plus fringe benefits.

Q What's fringe benefits?

A I guess pensions, life insurance, Blue Cross. That type of thing.

Q There's nothing in that particular provision about reimbursement of travel expenses; is there?

A No, there isn't.

Q Mr. Druker asked you and if I misinterpreted him, I am asking you, is there anything in those regulations specifically using the word "dual double reimbursement not permitted"?

A Dual reimbursement is not permitted. No, I don't believe those words are in here, no.

Q Therefore, I believe you testified that it was your interpretation and your opinion of these other rules and regulations supposedly reasonablness of cost and one other.

THE COURT: Applicable credit.

Q (continuing) Applicable credits, that formed the basis of your opinion that dual reimbursement was prohibited under these guidelines.

A Yes, that's correct.

Q And, do I understand that you received phone calls or inquiries from various grantees about the interpretation of these particular rules and regulations?

A We get numerous phone calls about all these areas and we consequently used the necessary applicable credits across the boards, and the dual compensatin, while it does provide salaries and wages, that's been expanded to cover all areas in our interpretation, and general counsel has more or less come forward and said the same thing.

Q Your who?

A Our general counsel in Washington. We are constantly in touch with them as far as telephone calls and discussions, and on a quarterly basis, we have financial management conferences with myself and my counterparts from the other regional offices getting together with the Washington office of the controller, staff, the general counsel, and discuss issues related to the program, and as I mentioned in the beginning that the financial guide states that it cannot cover every forseeable or possible area of financial question.

Q Then, am I to understand, Mr. Dembrowski, that your opinion as to the interpretation of these regulations is also based on the opinion of somebody else; an attorney, your general counsel?

A My opinion concerning which one in particular?

Q All of them.

A All of them. We use the federal management circular as a basis for all our discussions and interpretations.

Q Yes. But you told us, did you not, that your general counsel extended the meaning of dual compensation? Did you not tell us that?

A Yes. In discussions, this has been discussed previously.

Q And did you -- When was that?

A I don't recall specifically any specific time.

Q Well, was it prior to 1973?

A I have been with LEAA since 1971, October, '71, so at the numerous meetings I have attended, I don't remember the specific items we discussed at the conferences. However, these issues have been brought up.

Q To the best of your recolleciton, sir, did this particular issue of the expansion of the interpretation and meaning of dual compensation take place before April 30, 1973?

A I don't recall.

Q So, if it did not, as of that moment you would have interpreted dual compensation to mean dual wages and salaries?

A I would always interpret, based on the federal

mangement circular which talked about a necessity of applicable credits and any expenditure which was duplicated. That came out in 1968.

Q Well, in 1968 you told us there had been no substantial difference, and dual compensation meant salaries and wages.

A The dual compensation provision is a financial interpretation by our agency, that particular paragraph, based on, I guess, the general counsel's interpretation of the federal management circular.

Q That may be, Mr. Dembrowski, but I am asking you, and you told me, that as far as you were concerned, compensation meant salaries and wages.

A Compensation is written out in the federal management as salaries, wages, plus fringe benefits, chiefly.

Q Plus fringe benefits?

A Right.

Q Does it say anything about fringe benefits in the --

A Yes. It does in the federal management circular. It discusses fringe benefits as being the employer's share of social security, pension, Blue Cross, life insurance. Those type of items.

Q In Government's exhibit 59-B, may I ask you to

point out where that is stated (Handing to witness.)?

A Are you talking about --

Q Fringe benefits. The word "fringe benefits" or "social security."

A The definition of compensation is described further back in the manual.

Q Well, may I see it?

A Yes. (Handing to Mr. Cahn.)

Paragraph 10 of the compensation, and then it mentions benefits, and then you have to refer to the next page on what benefits are.

Q And in pen, compensation for personal services, does that indicate reimbursement for travel expenses?

A No, it doesn't. That's covered two pages later under, specifically, "travel."

Q Yes. And in two pages later, is there anything in the regulations which specifically -- using the words "prohibit dual compensation" -- "dual reimbursement", I am sorry.

A The words dual reimbursement is not there. The applicable credits are there.

Q That's a matter of your interpretation and the interpretation of your general counsel; is that not correct?

A Of what credit is?

Q Of what dual reimbursement could include?

A Yes, that would be a matter of interpretation.

Q And you received inquiries for your interpretations as to that?

A We receive inquiries on all these areas.

Q And I assume, therefore, Mr. Dembrowski, that if someone, a grantee of a LEAA grant, who has received this manual, reads it, and in his opinion determines that there is no problem in his mind about dual reimbursement, there would be no necessity to contact you for an interpretation?

A I think that if they read this thing through and had any questions, they would contact us. If it was clear, then they would go with what their understanding was.

Q If they had no problem, they would go with what their understanding was; is that correct?

Now, you were -- Could you tell me what it means to "wash" or "launder" LEAA funds?

A No, I have no idea what that is.

(continued next page)

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Q You have never heard of that expression before?

A Wash and launder? I don't know what context. What context would that be in?

A The use of LEAA funds would not be ordinarily approved, but if used in a certain way could be okayed?

A I don't really understand the question. Could you give me an example?

Q If you don't understand the question, sir, it's perfectly all right.

Now, Mr. Debrowski, as the expert in this particular area, if an individual travelled at the request of an organization funded by LEAA and borrowed the money to make the trip, used that money to make the trip and then was reimbursed for the expenses in whole or in part by the organization requesting his services, and used that money to repay his loan, would that, in your opinion, constitute a dual reimbursement?

MR. DRUKER: I object to the form of that question.

THE COURT: Let him answer.

MR. DRUKER: Could Mr. Cahn at least add in the word borrowed from whom?

THE COURT: So far it doesn't matter.

THE WITNESS: If I could. The way I understood

the question, if somebody needed advance funds to travel, and used their own funds, and subsequently received reimbursement for that trip, that is what we normally would do, yes.

Q No. I'll see if I can make the question a bit clearer.

Mr. Debrowski, if an individual was invited to speak at an organization function which was funded by the Law Enforcement Assistance Administration in San Francisco and he borrowed money for the air fare and the expenses which was contemplated to be incurred in San Francisco from an individual, John Jones, thereafter he received his compensation from the organization for which he performed services through an LEAA-funded check, and then reimbursed his friend, John Jones, with that check, would you say that this was dual reimbursement?

MR. DRUKER: I object.

THE COURT: Overruled. He can answer it.

A It doesn't seem that, it seems he can reimburse whoever it would be for that particular expense. In other words, if there was a documented trip and expenses were incurred, then that can be paid. If that's the question.

Q No. That's not the question. Let me make it more specific.

MR. DRUKER: My objection is based on the fact that this, I submit, is not based on facts in evidence. The hypothetical does not relate to the facts in evidence.

THE COURT: That's argumentative. Go ahead.

Q If an individual is invited to speak in San Francisco at a function by an organization feceiving funds from LEAA and he submits a voucher to a friend of his, John Jones, stating that the air fare to San Francisco is so and so, is $400, and I expect to pay in expenses of hotel bill and meals another $100, will you lend me $500; and the $500 is forthcoming, based upon that letter from the individual invited, he gets $500 from John Jones, but there is in existence a letter which indicates what that money is going to be used for, and after performing his services for the organization which invited him to San Francisco, he receives a check out of LEAA funds for the expenses, totalling $500, after submitting abill to that organization for expenses of $500 --

THE COURT: Isn't that the same question you asked before and the witness answered?

MR. CAHN: I didn't get an answer, your Honor.

THE COURT: I heard him answer. Go ahead.

Q (continuing) The individual takes the checks from that organization and repays it to his friend from whom

he borrowed it, would you interpret that as dual reimbusement?

A I don't think that would be dual reimbursement, the way you described it, if I understood it correctly.

Q Then would it be important or would it be significant to LEAA how that reimbursement was made to the individual from whom he borrowed the money?

A The only time it would be significant would be if there was a credit which should have been applied to the payment.

Q What do you mean by the "credit"?

A As we said before, the credit would be a receipt of cash or a reduction of expenses in order to make the expense to which the federal portion was charged consistent with the expense.

In other words, if it was a $500 expense, as youpointed out, then the individual should receive $500 back.

Q And it would make no significance -- it would be of no significant meaning to the LEAA how he arranged to repay his loan?

MR. DRUKER: Again, if Mr. Cahn shouts, can he stand back at the lecturn?

THE COURT: Yes.

A I am sorry. I didn't hear the whole question.

Q It would make no significant meaning to the LEAA

funded organization or the LEAA, specifically, how that individual managed to repay that loan; whether he decided to repay it at once or it was acceptable to the one who granted him the loan to repay it in two installments of $250 each.

A I don't think we would have been concerned with that.

MR. CAHN: Thank you.

THE COURT : Is there any redirect?

MR. DRUKER: Yes, your Honor. May I have just one moment?

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Debrowski, I will try to phrase a somewhat different example. Let's assume that an individual is travelling on behalf of an LEAA-funded organization; he has his fare expense which he incurs and his county pays for his air travel home, and his county pays the travel agent directly for the air fare. The individual returns fromhis trip and then calls the LEAA-funded grantee to pay the same amount to him to the individual.

A That would be unallowable. That would be a duplication and would not take in the credit that was previ-

ously received.

Q And a second hypothetical, excluding air fare, but talking about other sections. An individual taking an advance of, say, $500 from his county or a loan, he travels on LEAA business, he spends the $500 on hotel rooms, meals, what have you, he comes back, he submits a claim to his home county for the $500, the home county then gives him $500 which he uses to repay his original loan, then he submits a claim to the LEAA grantee, it's another $500, what would your ruling be there?

A Well, if they received $1,000 for a $500 trip, it would be unallowable.

Q And one final thing, sir. Directing your attention to page 17 in the manual, which is marked Government's exhibit 59 for identification, to the provision there entitled "Dual compensation," is that one of the provisions to which you would use in making your interpretations, and if not, say so. (Handing to witness.)

A This would be certainly a basis for that kind of a thing. In other words, it talks about being paid twice. This talks strictly about salary, but we use it for any other type of expense.

Q Is it fair to say this is an expression of policy?

A Yes.

MR. DRUKER: Your Honor, I am going to ask that that paragraph be marked into evidence, paragraph C on 17, and I will circle it in red, if there is no objection.

MR. CAHN: I have no objection.

THE COURT: Mark it, please.

THE CLERK: That's Government's exhibit 59-B in evidence.

MR. DRUKER: Thank you.

THE COURT: All right, I guess you are excused.

RECROSS EXAMINATION

BY MR. CAHN:

Q In reference to that, Mr. Debrowski, what is the allowable daily expense for an individual travelling on behalf of LEAA?

A The way the guidelines are written out?

Q No, not now.

A You would have to give me specifics.

Q From 1970 through 1974?

A I would say between '70 and '72, if it's a discretionary type grant, now, LEAA, the travel grant was limited to the federal travel regulations at that time, which was $25 a day per diem rate. Since that time, there has been a change

which states -- let's see, I am sorry, on through 1974 would be $25 a day, federal regulations; the federal rate. Currently, it's what was consistent with the state or local travel regulations would be allowable, provided they didn't exceed $50 a day.

Q And am I to understand that the $25 a day was allowable as a per diem expense, whether it's expended or not?

A No, no, unless it's there was a hotel or lodging occurred, then it would only be allowed for meals, for the day. In other words, it was $12 for meals and $13 for the hotel. So, if there was a hotel lodging incurred, I guessthe voucher would have to be submitted and the balance would be for the meals at $12 a day without receipt.

Q Are you stating that, therefore, there had to be a hotel voucher submitted on the basis of $25 a day?

A There had to be a hotel voucher to show that lodging incurred, yes, and if it was $15, I guess the ceiling would be $13 reimbursement and $12 for the meals. For example, $25 would be the total, even though $30 was incurred.

Q And if $20 was incurred?

A Then $20 would be -- let's see, you would be allowed $12 for the meals without documentation, assuming you were there the whole day, and the hotel bill. The hotel bill could be up to $25.

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Q So, if an individual ate with a relative he still would get his $12 a day for meals?

A Yes.

Q Is that in accordance with the credit provisions you were talking about?

A The credit?

Q Yes.

I don't believe that there's any provision for credit on meals if you are eating with a relative or friend.

Q And you are quite sure that the same thing did not provide for the entire $25 when there was an overnight stay? No voucher had to be submitted, whatsoever?

A A voucher had to be submitted for the hotel and the lodging.

Q I show you People's 3-A -- Government's 3-A in evidence, and ask you if there is any voucher for a hotel bill attached for that?

(Handing to witness.)

A There is no voucher attached to this, no.

Q Do you notice that it states in accordance with LEAA requirements, travel expenses and the per diem allowance of $40 a day for reimbursement?

A Yes.

Q And therefore, Mr. Debrowski, if there was any

voucher submitted with that, and a payment of $40 a day was made, do you say that the National Center for Prosecution Management would be in violation of the LEAA regulations?

A If I understand this correctly, there was the allowable figure of up to $40 on an actual basis, and I was under the impression that they had to be documented fully for the entire $40.

Q Are you sure?

A That's the way I understand the regulations, sir.

Q Therefore, I ask you again, would not the National Center for Prosecution Management have violated the regulations, in your interpretation, at the time, if they didn't require a hotel bill to be submitted on the basis of the $40 a day allowance?

A If I was looking at this from an audit standpoint, I would say that would be improper.

However, we don't approve travel vouchers. This is done in LEAA in Washington.

MR. DRUKER: Again, your Honor, would Mr. Cahn please step back to the lecturn while questioning the witness?

Q You say they are approved in Washington?

A Yes.

Q And if a check was issued with LEAA funds,

would there have been an approval of these voucher forms from Washington?

A I am sorry. I may have misinterpreted what you said there. If these were submitted for actual expenses, they would normally go to Washington.

I understand. If there was a budget item within the grant application for travel expenses, then I think that the National D.A.'s conference would be able to reimburse directly.

Q Specifically with Government's exhibit 3-A, what I would like to understand, that if a voucher or a claim was paid on the basis of $40 a day without supporting vouchers,would that be hotel bill, would you not say that the grantee was under no -- did not have any problem about the interpretation of LEAA regulations and did not need your interpretation?

A Would you give me a chance to read this, and I will give you a response?

Q Certainly.

A As a point here, in accordance with LEAA requirements, travel expenses and the per diem are authorized for reimbursement at $40. So, it points out it would have to be consistent with LEAA travel regulations, and my understanding of that would be that a voucher for an over-

night stay would have to be submitted with it, otherwise it would be improper.

Q And if -- Well, if Mr. Patrick Healy of the National Center for Prosecution Management or Joan Jacoby did not interpret that regulation the same way, she would have no particular reason to inquire for an interpretation; she would have no problem --

MR. DRUKER: Objection.

THE COURT: I don't know what you mean by "have no problem?"

Q Isn't that correct?

MR. DRUKER: I object.

THE COURT: Is it a reasonable interpretation of the regulations to omit a hotel voucher?

THE WITNESS: I don't believe it would.

Q And it would be unreasonable then for the National Center for Prosecution Management to pay it?

A Without supporting documentation?

Q Yes.

A I would say it would be improper.

Q Isn't it a fact that it is the regulations of those travelling on behalf of the federal government to be allowed $25 -- until a short time ago, $25 a day, and now $40 a day without supporting vouchers?

MR. DRUKER: I am going to object. This is a wholly different statute.

THE COURT: He's answered already.

A No.

MR. DRUKER: I will withdraw my objection.

(Whereupon the witness was excused.)

MR. DRUKER: The Government calls Gladys Maston.

G L A D Y S M A S T O N , having first been duly sworn by a Clerk of this Court, was examined and testified as follows:

THE CLERK: Can we have your name, please?

THE WITNESS: Gladys Maston, M-a-s-t-o-n.

THE COURT: Go ahead, Mr. Druker.

MR. DRUKER: Can I have just one moment, please, your Honor?

THE COURT: Well, if you need it.

MR. CAHN: May I?

THE COURT: Let's wait until the end of the day.

MR. CAHN: If I may?

THE COURT: Let's get started.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Miss Maston, would you state the place and nature of your present employment?

A The Board of Supervisors of the County of Nassau. I am secretary to the Executive Assistant of the Board.

Q Now, how long have you been employed in that capacity?

A About a year and four months.

Q Prior to that, where were you employed?

A District Attorney of Nassau County.

Q For how long, Mrs. Maston?

A Eighteen years.

Q And for twelve of those eighteen years, Mr. William Cahn was District Attorney; was he not?

A Yes.

Q And were you his secretary?

A Yes, I was.

Q Now, prior to that, whose secretary were you?

A Mr. Cahn.

Q For the entire eighteen years you were his secretary?

A No. When Mr. Cahn was in charge of the Rackets Bureau, I was his secretary. That was just prior to his becoming District Attorney.

Q Now, from time to time, Mrs. Maston, would Mr. Cahn undertake to travel on county business, so far as you know?

A Yes.

Q And would he generally take an advance of any sort from the prosecution fund before he would go?

A Yes, he would.

Q And if he were travelling out of New York State, would it be his regular practice to take a cash advance?

A Yes.

Q Now, in rough figures, without going through all, would these advances be in amounts of $500, $1,000 or $1,500, depending on how long he was away?

A Maybe less.

Q $300, maybe for a trip to Washington, D.C.?

A Yes.

Q How soon or how many days prior to leaving on these trips did he generally take advances?

A All depending on when he was leaving, usually the day or day before.

Q Within a day?

A Yes.

Q What was the procedure for taking these advances?

A He'd ask me to draw a check for so much money and have it chashed.

Q And you would physically write the check out?

A I would.

Q Did you keep any record of these checks?

A No. Only what was in the prosecution fund.

Q These checks would be drawn on the prosecution fund; would they not?

A Yes.

Q And you had stubs or checkbooks; did you not?

A Yes.

Q I would like to show you now these three somewhat bulky check-stub books.

MR. DRUKER: Can we stipulate those are the check stubs from the prosecution fund. These markings are pertinent.

MR. CAHN: Mr. Druker, I will further concede, if you want, the advance for the particular trips, if it helps you.

MR. DRUKER: We may stipulate that generally, if there's $500 for example, for a trip to New Orleans and Washington, D.C., this would be for a trip which came within a day or two?

MR. CAHN: That's correct.

MR. DRUKER: I will offer them into evidence.

THE COURT: I take it there is no objection to them, Mr. Cahn?

MR. CAHN: No objection, sir.

THE CLERK: Three books marked Government's

exhibit 60 A, B and C in evidence.

THE COURT: I have a conference with several judges at 4:30, so I am going to have to start promptly and I will excuse Mrs. Maston. We need you tomorrow morning at 10 o'clock, and I remind the jury that during the time we are apart don't talk or read or listen to or watch anything about the case, and don't talk at all withthe people in the court room and I will see you tomorrow at 10 o'clock.

(Whereupon Court was adjourned at 4:30 p.m.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645

WILLIAM CAHN, :

Defendant. :

----------x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ SEP 9 1976 ★
TIME A.M. P.M.

United States Courthouse
Brooklyn, New York

May 3, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Perry Auerbach
Official Court Reporter
U. S. District Court

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
THOMAS SCLAFANI, ESQ.
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

(The following took place outside the presence of the jury.)

pa/ss

laml 5/5

THE COURT: Good morning.

MR. DRUKER: Your Honor, may I be heard.

THE COURT: Yes.

MR. DRUKER: I represented last night to Mr. Cahn, and I intend to adhere to that representation, that with regard to character witnesses, my cross-examination is not going to go into their knowledge of certain extraneous actions by Mr. Cahn. I may attempt to show bias. I may ask some other things, but not outside that. With regard to what is termed as similar acts, I would like to ask the Court to consider an offer of proof by the Government of the theory of the story, your Honor. The superseding indictment includes as Count 46 or in Count 46 an allegation that Mr. Cahn received a complimentary hotel room in Las Vegas, Nevada, and on his return to Nassau County he billed -- on his return to Mineola he billed the National District Attorneys' Association for that hotel room.

Now, built into one of the other counts includes a trip to San Juan, Puerto Rico in 1971. This is a count in the indictment. It alleges a double billing by Mr. Cahn. It's not alleged in the

indictment, and simply for the return, that the county was the victim and the mails were not used. This trip in the indictment involved a complimentary room to Mr. Cahn in San Juan, Puerto Rico, and he billed the county for that hotel room. I submit, number one, that's part of the circumstances of this entire count. Indeed, the hotel bill will be in the exhibits which are now in evidence.

Secondly, that even if it's not considered to be as part of the count, which I can't see as being a legitimate contention that it is exactly a similar act.

The other area which I would want to go into, your Honor, again to show not only a pattern of conduct, intent on the part of the defendant, but also a lack of mistake or inadvertence with regard to Count 46.

I would want to offer into evidence the following:

That in or about the end of November, I think November 29th to December 13th, 1971, Mr. Cahn traveled with a group to London, England and Amsterdam and Brussels; that because he got a large group to go with him, the travel agents wrote off almost $900 from the moneys that other people paid on the trip. The total cost for Mr. Cahn, for himself

and his wife was $395. He had the travel agents bill in the amount of $1,050. He attached this to his county claim and he caused the county to reimburse him in the amount of $1,050.

The other similar act I would offer relates to March, 1971. Mr. Cahn and a group from the National District Attorneys' Association traveled to Honolulu, Hawaii. While there, Mr. Cahn received a complimentary hotel room. He returned to New York and he billed Nassau County using someone else' room bill, and apparently transposing the top of his room bill with his name on it so that it would look like a room that he had paid for rather than a complimentary room in Honolulu. I submit that these are highly probative and that any prejudicial value is outweighed by the probative value. In particular, the Puerto Rico one and everything else relating to that trip is alleged in the indictment.

MR. CAHN: Your Honor, without conceding the truth of this, and we contradict everything that Mr. Druker has to offer, number one, we contend that these acts, even if as stated by Mr. Druker, are not similar acts, and may I say this was presented to Judge Dooling and he so ruled --

THE COURT: I don't think Count 46 was in the

case.

MR. DRUKER: It was not, your Honor.

MR. CAHN: Your Honor, 46 was established by Mr. Healy, that the $100 of the hotel bill was an amount to which the defendant was entitled whetheror not he slept in the park. He was entitled to lodging for that particular trip.

THE COURT: That's only testimony. That isn't conclusive.

MR. CAHN: Well.

THE COURT: The jury doesn't have to believe that.

MR. CAHN: I understand that, your Honor, but especially, may I bring to your Honor's attention that this involves the National District Attorney's Association.

Now, insofar as the county is concerned, there is no mailing. There is no alleged fraud against the county in the last count. You say that in this particular indictment Count 46 wasn't in. In this particular indictment there is no frauds alleged against the county.

MR. DRUKER: I will concede it was hand-delivered to the alleged victim rather than mailed. That is the only difference in Count 46.

MR. CAHN: Insofar as the complimentary rooms are concerned, as I say, it involves totally different acts. It involves something now that places a burden on the defendant to prove outside the framework of the indictment.

Now, three, four other cases to which the Government alludes. In no way, as Judge Dooling pointed out insofar as the indictment is concerned, the other acts should show a modus operandi, and in this particular instance, no way, in no way do these other acts alluded to by Mr. Druker show a modus -- Acts, similar acts, as double billing, and the incidents, the single one incident in Count 46 of an alleged billing to the National District Attorney's Association of a room, in no way, your Honor, do I believe that it fairly represents a modus operandi as is stated in the entire forty-five other counts of the indictment.

THE COURT: Well, the forty-six charges a fraudulent scheme in connection with the trip to Las Vegas, and I would suppose the whole of that, including the fact that the $100 was also obtained from Nassau County, was admissible.

MR. CAHN: Your Honor, there is no claim that that hundred dollars, and I think Mr. Druker will

concede, that the hundred dollars was not --

MR. DRUKER: That was from the National District Attorneys' Association on that one. I am saying that the only difference in the similar acts offered is that the county was billed for an alleged complimentary hotel room or airfare ratherthan in Count 46, the outside entity.

THE COURT: There were three other situations?

MR. DRUKER: Yes. One of which is related or took place with regard to Count 17. I think it might be --

THE COURT: Well, I didn't think of these before in relation to Count 46 which Mr. Druker mentioned this morning. This isn't your next testimony, isn't it?

MR. DRUKER: It's not the next testimony, your Honor. The witnesses are here from Honolulu and San Juan, and so I had hoped to put them on today with regard to this.

THE COURT: Let me take it up on the morning break.

MR. CAHN: May I?

THE COURT: Yes.

MR. CAHN: May I ask Mr. Druker, am I correct that you concede that the hundred dollars to which you

referred to insofar as Las Vegas is concerned, the hotel bill was not submitted to, nor paid by Nassau County.

MR. DRUKER: I think I've already stated that. It's just a different victim. Well, there are lots of different statements alleged in the indictment, and now I am offering to show an identical fraud against still another victim.

MR. CAHN: Again, your Honor, this is in no' way identical. There was one sentence within Count 46 of this indictment, and I submit to you that under the circumstances this was deliberately arranged for the purpose of trying to make many other acts. Whether or not, especially this London trip, if I may talk to you, what the travel agent did in order to accommodate me or things he did in order to accommodate me or alleges he did in order to accommodate me is by no means a fraudulent act on my part or does in no way indicate fraud or deceit in my part and in no way are the mails involved. In no way are --

MR. DRUKER: Oh, the mails might be involved. I think the invoice may have been mailed to Mr. Cahn's office. I don't think that's important. I think it's deceitful for Mr. Cahn to receive a free trip and $1,050 for the trip, and to have the county pay him.

MR. CAHN: You informed your Honor, and the record will show that there was no free trip involved, that there was a claim by the --

MR. DRUKER: I think that goes to the merits of t[illegible].

THE COURT: Wait a minute. There was what?

MR. CAHN: There was a claim. Your Honor, if I am not mistaken, please correct me, Mr. Druker, I don't intend to misrepresent. There was a downpayment for that trip. There was a bill sent. Mr. Druker claims that apparently that the bill was induced to be sent by me.

However, I think Mr. Druker will concede that the books of this travel agent indicate a bill outstanding for which that travel agent says he claimed a loss. I claim that bill was paid, and in no way, your Honor, do I believe that this has anything, in any way to do as a similar act. There is no claim of double billing in any of the instances, and by the way, your Honor, even though one of the counts involves a trip which partially took the defendant to San Juan, Puerto Rico, there is no claim here that that part of the trip was double billed to anybody.

THE COURT: The only claim in Puerto Rico, I understand, was charging for a free room.

MR. DRUKER: It's at Count 17, your Honor, alleged it was involved in a trip to San Juan and Houston and Phoenix.

THE COURT: Yes.

MR. DRUKER: The county claim for that trip was in evidence, and I believe the NDAA portion of that is in evidence. It's alleged that with regard to that trip, the defendant double billed, I think, for the Houston portion of the trip.

MR. CAHN: Not for Phoenix.

MR. DRUKER: I am not sure, but he double billed a part of that trip. The document he submitted to the county for the hotel room which shows a bill on it, and deleted to that is the word "comp" or complimentary. I would like to put the representation of the hotel with the original bill which has the original on it, Cahn deleted that when he xeroxed his bill and submitted it to the county.

THE COURT: This is Count 17. Why shouldn't that go in?

MR. CAHN: There's no double billing here, your Honor, in Count 17. There is no charge I used the mails to defraud the NDAA or the County of Nassau or any other association by -- insofar as the San Juan, Puerto Rico trip is concerned.

MR. DRUKER: It shows a fraud within a fraud. 309

THE COURT: If it's part of the count, I am going to let it in.

MR. CAHN: Your Honor, it's not part of the count.

THE COURT: It's part of the trip that is in the count.

MR. CAHN: If I took a vacation to Canada and I then went down on county business, would the vacation be a part of the count, your Honor?

THE COURT: I don't know about the vacation, but if you bill for a hundred dollars for a room you didn't pay for its part of the trip.

MR. DRUKER: the document, the county, the hotel bill is in evidence now as part of Mr. Cahn's claims. With regard to the London trip, your Honor, what Mr. Cahn now is arguing is a matter of credibility. He says he didn't. The travel agent says he did.

THE COURT: Let's bring in the jury and we will continue with Mrs. Maston.

MR. CAHN: Do we have a ruling, your Honor.

THE COURT: I am going to permit the Puerto Rico matter. I am going to reserve until the morning break on the rest of it.

MR. DRUKER: Thank you, your Honor.

(Whereupon, the jury entered the Courtroom at 10:15 a.m.)

THE COURT: Good morning, ladies and gentlemen.

You all came in order this morning very neatly organized.

Mrs. Maston, you were sworn yesterday, you are still under oath today. You may take your seat. Go ahead, Mr. Druker.

G L A D Y S M A S T O N , having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. DRUKER: (Continued.)

Q Mrs. Maston, I believe you identified check stub books which are now in evidence, and you testified about advances that Mr. Cahn would take prior to traveling.

Now, in that regard, I show you this group, if you would, of documents, and I will ask if you recognize those and can identify those as having been or are business records of the Nassau District Attorneys' office kept and maintained as such?

(Handing to witness.)

A Yes.

Q What are they?

A They are the ledger page coverings of the

prosecution fund.

Q Do they bear any relation to the check or check stubs which are now Government's 60-A, B and C in evidence?

A Yes. Each check is entered.

Q The check is written out and entered in the fund?

A Yes.

Q Are moneys from time to time deposited in the prosecution fund?

A Yes.

Q Are those similarly entered in the books?

A Yes.

Q Now, let's assume that Mr. Cahn was going on a trip to Chicago and ordinarily takes, for example, a $500 cash advance, it might be more or less -

A Right.

Q We'll say $500. Now, when he returned from Chicago, would he then ordinarily pay back the prosecution fund or would he pay it back at some later date after he submitted a claim to the county?

A After he submitted a claim to the county.

Q He gets $500 and spends some or all of the $500 in Chicago?

A Yes.

Q Then he would fill out a claim which would go into the controller of Nassau County?

A Yes.

Q What would be listed in the claim ordinarily?

A Usually the airfare, meals, lodging and some incidentals.

Q His travel expenses; right?

A Yes.

Q Then the county -- would the county controller issue a check pursuant to those claims?

A Yes.

Q And at least with regard to the travel expenses other than -- withdrawn.

With regard to the airfare, would that generally be on a separate claim from the other travel expenses?

A No.

Q I will ask you whether or not in most instances Mrs. Maston, there were two claims; one, for example, A.T., his travel as a vendor, and another one for the prosecution fund on the first claim, generally just having airfare made out to the travel agent, and the second claim being for the hotel expenses, car rentals, taxicabs and the like, gratuities. Does that refresh your recollection at all?

A Sometimes it happened that way.

Q Now, with regard to the claims for the prosecution fund, would a check come in from the controller of Nassau County?

A Yes.

Q Made out to him?

A To the prosecution fund.

Q Who would endorse that check?

A Mr. Cahn.

Q Would it be cashed in the ordinary course of business?

A Yes.

Q And at that point, would the prosecution fund be repaid for the advance that had been taken previously?

A Yes.

Q So then the prosecution fund was originally out $500 on the advance, and that was repaid by the county pursuant to the claim that Mr. Cahn filed after he got back from his trip; right?

A I am just trying to think back now. It's been a few years since I was there and working this. I believe that's right.

Q And, in many instances, would there also not be a separate claim sent to -- an outside claim for Mr. Cahn's

expenses; NDAA or the National College?

A In some instances, yes.

Q When those checks came in -- withdrawn.

Would checks come in pursuant to those claims, to your knowledge?

A Yes.

Q What would be the procedure once those checks came in?

A We cashed them.

Q You say, "We." Whom are you talking about?

A It's through the process, usually Mr. Cahn signed them, and I would send someone over to the bank to cash them.

Q Walter Voolins?

A Yes.

Q Sometimes other people in the office?

A Yes.

Q If a check came in from an outside organization in the name of Joseph Spinnato, what would be done with that check, if you know, in the ordinary course? Would it be forwarded to Mr. Spinnato or would Mr. Spinnato come down to your office?

A Either way. Sometimes it was sent down, sometimes he would come down.

Q Once Mr. Spinnato's signature appeared on the check, it would be cashed in the ordinary course of business as the other checks?

A I would assume so.

Q Now, showing you now Government's Exhibits 1 through 49 in evidence, and I will ask you briefly if you will just leaf through those, and to tell whether you recognize those as being claims which were submitted by Mr. Cahn to Nassau County?

MR. CAHN: I will concede that, Mr. Druker.

(Continued next page.)

MR. DRUKER: May we stipulate that the signatures there are of Mr. Cahn.

MR. CAHN: By all means.

THE COURT: What are the exhibit numbers?

MR. DRUKER: 1 through 49.

THE COURT: Aren't they in evidence already?

MR. DRUKER: Yes sir, but I just wanted to authenticate the handwriting.

THE COURT: All right.

Q And generally, were these claims, typed by you or some one else, to your knowledge?

A By me, most of the time.

Q With regard to the information contained on the claim, and I am talking about the figures, what would be the source for that?

A Well, receipts that Mr. Cahn would bring back. Receipts from the airlines,

Q In those instances where there were receipts he would give them to you and you would include them in the claim?

A Yes.

Q How about with regard to meals, taxi-cabs, gratuities, definite receipts for those items?

A No. Not usually.

Q And these would be put in on the county claim as part of his travel expenses?

A The meals?

Q Yes.

A Yes.

Q And taxi-cabs?

A Yes.

Q Gratuities?

A Yes.

Q And how would you arrive at the figures to enter into? For example, looking at Government's Exhibit 14 in evidence which says, "September 27, 1971, $85.00,"how would you arrive at that figure?

A Mr. Cahn usually gave me that figure.

Q Would he have any listings or was off the top of his head?

A I really don't recall. His desk was always with alot of papers on it.

Q In your office or his office?

A Either place.

Q Would he tell you in or around the 26th he spent $25.00 on meals, on the 27th he spent $30.00 on meals?

A Something like that.

Q Did he ever give you a list for this?

A No.

Q Did you ever see him holding any lists or referring to any lists or documents?

A Not definitely. He always had papers in his hand he was reading from.

Q Did you know what those papers were?

A Receipts.

I think he did have things he used to carry in his wallet, I am not sure, little slips of paper with items on it.

Q He would read from those and you would enter the figures on to the county claims?

A Yes.

Q I am going to show you another series of documents some of which are in evidence and some of which aren't, this would be Government's Exhibits 1 through 49A, and Mrs. Maston, I will ask if you will be good enough to recognize those other claims submitted to the outside organizations that you previously mentioned.

(Handing to witness.)

A Yes.

Q And were these generally typed up by you?

A Yes.

Q And was Mr. Cahn similarly the source of the information that was put down on those claims other than actual

receipts?

A Yes.

Q Now, with regard to the county claims, these weren't mailed to the comptroller of Nassau County in the ordinary course of business?

A No.

Q How were they sent?

A Through interoffice message.

Q The checks came back the same way?

A Yes.

Q Now, one through 49A, that you have in front of you, were these claims in the ordinary and usual course of business sent by interoffice or some other means?

A I don't follow?

Q How did those claims get sent to the addressee?

A I assume they were mailed.

Q Did you put them in a mailbox?

A I put them in the envelope. What happened to them then, I don't know.

Q With instructions, I take it to be mailed?

A Yes. In the process service department there was boxes for each department.

MR. CAHN: Mr. Druker, I will concede they were mailed.

MR. DRUKER: Thank you, sir.

Q With regard to the checks that came in pursuant to those mails, did these arrive by messenger or mail or some other means?

A The ones from outside?

Q Yes.

A Came by mail.

Q Again -- by the way, the signature on these documents, is that of whom, if you recognize?

MR. CAHN: Concede.

Q It's that of the defendant, William Cahn.

In the instances where it says Joseph Stinnato, it would ordinarily be Joseph Stinnato's signature.

A Yes.

MR. DRUKER: Your Honor, with regard to the prosecution fund journal -- is that

THE WITNESS: A ledger.

MR. DRUKER: The ledger, I will ask that the portion relating to Mr. Cahn be admitted into evidence and that the remainder be marked for identification.

THE COURT: Mr. Cahn, is there any objection?

MR. DRUKER: There is no objection, Your Honor.

THE COURT: Mark them, please.

THE CLERK: The ledger as Government's 61 for

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identification, and the one part of the ledger is 61-A in evidence.

MR. DRUKER: I have no further questions.

Thank you.

THE COURT: You may cross-examine.

MR. CAHN: Thank you.

CROSS EXAMINATION

BY MR. CAHN:

Q Gladys, you testified that in most instances when the defendant went on his trip he took a check from the prosecution fund as an advance?

A Yes.

Q And depending upon how long he thought the trip would take was the amount that he took from the prosecution fund?

A Yes.

Q Is that correct?

A Yes.

Q Now, along with that, insofar as the trip was concerned, there came a time, did there not, when the travel agency was paid directly by check from the prosecution fund?

A Yes.

Q And, the comptroller repaid the prosecution fund for that payment of airfare: did he not?

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A Yes.

Q Now, prior to that, was also the procedure of having the travel agency bill the county directly and receive a check from the county directly?

A Yes.

Q And Gladys, wasn't there quite a discussion about the length of time that it took the county to pay the travel agency?

A Yes.

Q And isn't that the reason that we decided to pay the travel agency directly from the prosecution fund?

A Yes.

MR. DRUKER: Your Honor, under these circumstances, I am going to object to this line of questioning as leading.

MR. CAHN: Cross-examination, Your Honor.

THE COURT: Well, technically it's cross-examination. I don't think leading was improper there. I will let the answer stand.

Q Now, were these claim forms for the travel of the District Attorney the only claims forms that the District Attorney signed?

A No, sir.

Q As a matter of fact, the District Attorney was

obligated to sign every claim form submitted to the county by any member of the District Attorney's staff; is that not true?

A Not only by every member of the D.A.'s staff, but by all purchasing departments, agencies, etc.

Q In other words, if typewriters, filing cabinets were purchased and a bill was submitted to the county by these vendors, it was the obligation of the District Attorney to sign the claim form?

A Yes, Mr. Cahn.

Q Gladys, who checked those claim forms?

A I did.

Q And could you tell the Court and the jury, if you will, the procedure that was followed in reference to the signing of claim forms, the signing of letters dictated to you bythe District Attorney, the signing of letters dictated to you by the District Attorney to the various organizations, with which I was involved?

A There was such a volume of vouchers, everyday that we had to go through.

Q Could you keep your voice up so that the last juror in the box can hear you?

A There was such a volume or voucher of claim forms, each day that had been signed and gone through. There must have been fifty or a hundred each day. I would accumulate

them. They would come from every member practically from the office. I would have to go through them to see if there was any discrepancies, signatures missing, sometimes amounts, if they were correct, and then I would take them into Mr. Cahn when I had a free moment and give them to him to sign. I know, of course, he never looked at each one, because I had to hold them up as he was signing them on the bottom line.

MR. CAHN: May I have the Court's indulgence for a moment?

THE COURT: Yes.

(Whereupon Mr. Cahn walked over to the fund's counsel table)

MR. CAHN: If I may, Your Honor?

Q Gladys, is it not true that the claim forms were usually brought in by you in a folder such as this (Handing to witness)?

A Yes.

Q If I may, could you show the Court and jury just exactly what you would do to have me sign the vouchers?

MR. DRUKER: Your Honor, I just want to register an objection to those procedures which are related to claims from other vendors. They have nothing to do, apparently, with the claims which are in the indictment.

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THE COURT: Well, it's a matter for the jury to determine. I will overrule the objection.

A Usually I just hold each one like this (indicating) as Mr. Cahn would sign it.

Q Did that apply to letters to the organizations, and did that apply to all of the claim forms involved?

A Yes.

Q Now, did there come a time, any time, Gladys, when you brought to my attention certain specific items?

A Yes. Sometimes I did.

Q And that's when you thought that there was an inconsistency or mistake of some kind?

A Yes, sir.

Q Thus, you would try to bring to my attention?

A Yes.

Q Otherwise you were the source of the check?

A Yes.

Q Now, you took care of theprosecution fund; did you not?

A Yes, I did.

Q You issued the checks?

A Yes.

Q You took the books?

Who was authorized to sign the checks?

A You and the Chief Assistants.

Q And thereafter, was the Executive Assistant permitted to sign?

A Yes.

Q And in the last few years that was Mr. Margolin and Mr. Roberto; wasn't that?

A Yes.

Q Along with me. If I was not present, they were permitted to sign?

A Yes.

Q Their signatures were registered with the county?

A Yes.

Q Now, you stated that when I went on the trips I would take an advance and on my return submit a claim voucher to the county for that particular trip?

A Yes.

Q And in most instances it was made out to the prosecution fund?

A Yes.

Q Now, if the claim was for $500.00 and the prosecution fund check was for $500.00 from the county, you said I would endorse the check and then you would cash it or wouldn't you redeposit the check into the fund?

A Yes. I realized that when Ianswered Mr. Druker.

The check, itself, would be deposited in the fund. You wouldn't cash it.

Q Now, if the advance taken by the defendant, William Cahn, was $750.00, and the check -- and by the way, your stub would usually indicate one amount for one particular trip; is that correct?

A Yes.

Q Now, may I repeat the question by the way of this hypothetical. If the advance taken were in the amount of $250.00, and Mr. Cahn spent $500.00, submitting county voucher in the amount of $500.00, upon his return, did he give you the $250.00 immediately or did he wait until the $500.00 check came in and gave you $750.00 at one time?

A In the beginning we did this that way, but it became too confusing for me, because I am not a bookkeeper.

Q And it was at your request that I hold the excess until the check came in and then you deposited the check and the cash for $250.00 together?

A Yes.

MR. CAHN: Your Honor, I think we should come to the sidebar.

THE COURT: All right.

(Whereupon the following took place outside the presence of the jury.)

MR. CAHN: I don't want to upset Your Honor, but a question was asked of what happened to the check that was received from the organization, and Mrs. Maston said she cashed it, I endorsed it, she usually gave it to --

MR. DRUKER: She didn't testify she gave it to anybody, just it was cashed.

THE COURT: What's the point?

MR. CAHN: Just a moment. If you remember--

THE COURT: What's the point?

MR. DRUKER: This opens the door.

MR. CAHN: I am going to ask what she did with the money; what she did with the cash.

MR. DRUKER: Your Honor, the defendant hasn't been -- I have no objection to her testifying as to what she physically did with the cash. If she wants to testify she gave it to Mr. Cahn or put it in an envelope, but I will object to going beyond that.

MR. CAHN: Your Honor, I want to be able to bring out about the blue envelope in my private closet marked S.H., and S.H. stan[illegible] San Houston. He asked what she did with the check, [illegible]r Honor. I did not. If Your Honor so desires, I will end it there, but I think it's certainly proper on cross-examination not to leave something -- she's got cash now. What did she

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do with it if -- I don't want to take the stand.

MR. DRUKER: I have no objection to that, Your Honor.

THE COURT: I would think it's proper.

MR. CAHN: Thank you.

(Whereupon the following took place before the jury.)

CONTINUED CROSS EXAMINATION

BY MR. CAHN:

Q Gladys, you testified on direct examination that when I returned from the trip, a letter was also sent when appropriate to the organization forwhich I was travelling?

A Yes.

Q The National District Attorney's Association?

A Yes.

Q National College of District Attorney's?

A Yes.

Q Task Force?

A Yes.

Q National Center for Prosecutional Management- and other organizations?

A Yes.

Q And you testified that I dictated a letter in reference to that?

A In the beginning you dictated the letters, but after that I more or less followed my own wording, and prepared them myself.

Q After receiving the specific amounts from me you --

A Yes.

Q (continuing) dictated your own letters?

A Yes.

Q Now, and you said that, and I conceded that those letters were mailed to the organization?

A Yes.

Q And that sometimes there was a delay; was there not?

A Oh, yes.

Q In receiving the check back from the organization?

A Yes, there was.

Q And when you received the check back from the organization, you testified that the checks were cashed?

A That's right.

Q In most instances, Gladys, what did you do with that cash?

A Well, when there was an honorarium I would take out the honorarium and take out for you, and the balance I would put in a closet marked S.H.

375—Affidavit of Service

The Reporter Co., Inc., 15 Park Place, New York, N. Y. 10007

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES

VS

WILLIAM CAHN

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NY , ss:

BERNARD S. GREENBERG being duly sworn,

deposes and says that he is over the age of 21 years and resides at 162 E. 7th St NY, NY

That on the 1sty day of October, 1976 19 at

he served the annexed appendix; appellant's brief and exhibit volume upon

David Trager, U.S. Attorney, 225 Cadman Plaza, Brooklyn, NY 11201

in this action, by delivering to and leaving with said attorneys

two copies of the brief and appendix and one of the exhibit volume true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 1st
day of October, 1976 19

Bernard S Greenberg

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 19

76-1328

ORIGINAL

B P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

Appellee,

against

WILLIAM CAHN,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK.

APPENDIX.

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UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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Q What was S.H.?

A San Houston.

MR. DRUKER: I am going to object and move to strike that latter portion.

THE COURT: Yes. Strike it out.

MR. DRUKER: Thank you.

Q Were you told what S.H. was?

MR. DRUKER: I am going to object to what you were told.

THE COURT: I think you covered what I said you could do.

MR. CAHN: Ok.

Q Now, this closet that you talk about, Gladys, where was that?

A In your office.

Q My private office?

A Yes.

Q What it locked at all times?

A Yes, it was.

Q Who had the keys?

A I had one and you had one.

Q Now, Mrs. Maston, do you recollect a claim being sent to the National Center for Prosecution Management during approximately March of 1974, for a trip to Mexico?

A Yes, I believe so.

Q And there was also a National Convention of the National District Attorney's Association in Mexico City at the same time; is that correct?

A Yes.

Q Now, you remember filling out a form, a claim form to the National Center for Prosecution Management on or about March 25th, 1974, for reimbursement of expenses for the Mexico City trip?

A Yes.

Q And do you remember what you were specifically told about the check, if and when received, from the National Center for Prosecution Management? Do you remember?

A Yes. I was told to return it to the county, but instead, I cashed it, and then I sent the cash over to the county.

Q Do you remember, if you do, with who you sent it?

A I believe it was Hy Goldstein.

Q And do you have any records or any return of the receipt from the county or from Hy Goldstein for that?

A I don't have it, personally, but it should have come back to the county.

Q And in any event, did you give that money to me? The money?

A No, I did not.

Q And do you remember approximately when thatcheck was received?

A Approximately, no, but I know it was late, because we were always looking if it had gone on or come back or what.

Q And if I show you the check attached to People's Exhibit 3A in evidence, with the date May 16, 1974, would that refresh your recollection? (Handing to witness.)

A Yes.

Q And the claim form was mailed out on March 25, 1974?

A Yes.

Q Now, I ask you to look at Government's Exhibit 3A in evidence and the defendant's B for identification, and ask you if you remember which exhibit was sent to the National Center for Prosecution Management; the original of which receipt?

A Well the original was sent, but I see there's changes on here which is not on the copy that I have.

Q Are you telling the jury that this is a copy of the receipt that we sent?

A Yes. The original has handwritten changes.

MR. CAHN: Your Honor, I now offer defendant's

Exhibit B in evidence after showing it to Mr. Druker, with conceding that this is my handwriting.

(Handing to Mr. Druker.)

MR. DRUKER: I have no objection.

THE COURT: Mark it.

THE CLERK: Defendant's Exhibit B marked in evidence.

Q Drawing your attention, specifically, to Government's Exhibit 3A in evidence, did you cross out $25.00 and put $40.00 in?

A I did not.

Q Am I correct in stating that when the defendant's exhibit B was sent in, the printed amount of $25.00 remained and no change was made.

A This is correct.

Q I show you Government's Exhibit 1 in evidence, which involves a trip to Chicago and San Francisco, and also Government's Exhibit 1-A in evidence, and ask you if you remember receiving a check from the National College of District Attorneys for the Chicago portion of that trip, which was to Chicago and San Francisco? (Handing to witness).

A Mr. Cahn, at this point I don't remember receiving the check, but if everything came out in my prosecution fund, it must have been received.

Q I show you defendant's Exhibit A for identification and ask you to look at that, and ask you if you know what that is (Handing to witness)?

A It's a receipt from the county treasurer as having received $285.46 in cash to reimburse --

MR. DRUKER: I am going to object. It's not in evidence. I think she can describe what it is, but as to testifying to details, I object.

THE WITNESS: This is the defendant's Exhibit A.

MR. DRUKER: I am going to object to any speeches by the witness.

THE COURT: Yes. I think it's just for identification at this time.

THE WITNESS: I am sorry.

Q In showing you Government's Exhibit 1A, Gladys, I ask you whether you crossed out the typewritten $100.00 and made it $135.00, crossed out the $242.73 and made it $277.73?

A I didn't.

Q And were those cross outs on the claim form when it was submitted to the National College of District Attorneys?

A They were not.

Q Now, showing you defendant's Exhibit A in evidence I ask you if that refreshes yourrecollection, and will ask you whether or not the monies received from the National College

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of District Attorneys for both Mr. Stinnato and the defendant William Cahn, less $135.00 honorarium, consultant fee for both, was returned to the county of Nassau Treasury.

MR. DRUKER: I am going to object.

THE COURT: Yes.

Sustained. Let the witness testify what happened, Mr. Cahn.

THE WITNESS: According to the receipt from the county treasurer, it was --

THE COURT: According to your recollection.

THE WITNESS: Yes.

Q It was returned?

A Yes.

Q Is that defendant's exhibit A a receipt for that money --a copy of the receipt of that money from the county treasurer?

A It is.

MR. CAHN: I offer it in evidence.

(Handing to Mr. Druker.)

MR. DRUKER: Your Honor, first of all, may I have a voir dire on this?

THE COURT: Yes.

VOIR DIRE

BY MR. DRUKER:

Q Mrs. Maston, it's your testimony that this is a receipt from the county treasurer of Nassau County?

A Yes.

Q Doesthe county treasurer's signature appear on that?

A No.

Q Does anybody from the county's?

A You will see the stamp onthe bottom. It's almost cut off. That's the usual stamp.

Q What does that say? I am unable to read it.

A I am unable to read it either.

Q Whose signature is the only signaturethat appears on that document, Mrs. Maston?

A Mr. Cahn's.

Q Where is the original of that?

A On file in the treasurer's office or in the comptroller's office. They getthe original.

Q Who typed it?

A I did.

MR. CAHN: Mr. Druker, if you so desire --

MR. DRUKER: I am going to object to it, Your Honor.

THE COURT: Come to the side bar on this.

(Whereupon a side bar was held outside the presence of the jury as follows:)

MR. DRUKER: May I have just one moment, Your Honor?

THE COURT: Yes.

I would think if there is a receipt for money that Mr. Cahn delivered, that Mr. Cahn ought to have the receipt.

MR. DRUKER: Your Honor, first of all, even assuming for the sake of argument that this is a legitimate receipt or a copy thereof, this comes number one, after the date charged in the indictment, after Mr. Cahn was under investigation, after Mr. Cahn had been asked to provide documents, subpoenaed by the Government. This is a self-serving document. There was a crime committed and he was caught red-handed, then he tried to return the proceeds to a possible victim of a crime. I submit that that document had been predated, the receipt of the money or it's not that ludicrous, Mr. Cahn. Had Mr. Cahn not been under investigation, it might be that this is the same as if he was stealing.

THE COURT: That I am not sure of, but I think you are entitled to have some evidence that the original is in the comptroller's office.

MR. CAHN: Your Honor, we have been excepting copies of every single claim that has come from the

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comptroller. These, if I may explain to Your Honor, P.R-3, such forms are submitted to the county when monies are returned, and then they are stamped.

MR. DRUKER If Mr. Cahn represents on the record that there was an original of this and it's on file in the county comptroller's office, I will accept that representation, but I continue my objection on the ground that this document, because of its date, is inadmissible.

MR. CAHN: Your Honor, there was no indictment in this case until August of 1975. The investigation, if Mr. Druker wants to tell me the date the investigation took place, fine, but if that was true, then there would have been no reasonableness for me to bill the National College of District Attorneys, after the investigation started, and I think that goes to the weight to be given to this when it goes to the jury.

THE COURT: I think that's right.

MR. DRUKER: I accept your representation.

(Whereupon, the following took place before the jury.)

THE CLERK: Defendant's Exhibit A marked in evidence.

CONTINUED CROSS EXAMINATION

BY MR. CAHN:

Q Gladys, I now show you Government's Exhibit --

MR. DRUKER: Your Honor, Mr. Cahn and I stipulated that Government's Exhibit 39 for identification may be admitted into evidence.

THE CLERK: So marked in evidence. That's 39A.

Q Mrs. Maston, I show you --

MR. CAHN: May I ask the Court's indulgence?

THE COURT: Yes.

MR. CAHN: Thank you.

Q Gladys, I show you Government's Exhibit 39A in evidence with specific attention to the endorsement on the check, Joseph E. Spinnato, and further endorsed, Walter E. Voolins. Do you know whose signature the signature of Joseph Spinnato at the bottom is?

A I don't know. It's Mr. Spinnato's.

Q It's mine; isn't it?

A Yes. I guess.

Q Do you remember the circumstances under which that was signed?

A Isn't that the time that you called Mr. Spinnato and you asked --

MR. DRUKER: I am going to object. She could only have at the very best in listening to one side of a telephone conversation, and she can't authenticate.

THE COURT: No, I will let her testify.

Q Who called Mr. Spinnato?

A I called him and I spoke to him.

Q Was this in front of your desk?

A Yes.

Q Did I get on the phone thereafter?

A Yes.

Q Did you hear what I said to him?

A Yes.

Q What did I say to him?

A I told him the check came in and was it ok that you endorsed it and had it cashed?

Q After I hung up, did I have a conversation with you as to what Mr. Spinnato said?

A Yes.

Q What did I tell you he said?

MR. DRUKER: Object.

THE COURT: Sustained.

MR. CAHN: I didn't hear your Honor's ruling.

THE COURT: If she wasn't on the telephone conversation I will sustain the objection.

MR. CAHN: But I am talking of a conversation between the witness and the defendant, Your Honor.

THE COURT: Yes. That's what I understand.

Q Did we havea conversation after the telephone call -- converation?

MR. DRUKER: What Mr. Cahn told Mrs. Maston what Mr. Spinnato said would be hearsay.

THE COURT: The question was, did you have a conversation with Mr. Cahn after the telephone conversation?

THE WITNESS: Yes.

(continued next page)

Q What did I say to you?

THE COURT: What did he do after the telephone conversation?

THE WITNESS: He endorsed the check and Walter cashed it.

MR. CAHN: I don't want to press it, Your Honor; am I not permitted to say what I said to him?

THE COURT: No you are not.

I have sustained the objection.

MR. CAHN: Thank you, Gladys. No more questions, Your Honor.

THE COURT: Is there any redirect?

MR. DRUKER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mrs. Maston, Mr. Cahn indicated about claims that claim in from the outside vendors which he approved as a matter of course; is that right?

A Yes.

Q Of course these were claims filled out by the vendors or some one outside your office?

A Yes.

Q The figures weren't provided by Mr. Cahn to you?

A No.

Q They came as a matter of course. They were presented to Mr. Cahn and he signed them?

A Yes.

Q That's not the same procedure that was followed with regard to Mr. Cahn's travel claims to Nassau County? Is that right?

A I don't understand what the --

Q Did Mr. Cahn personally dictate or give you the information that went down on those claims?

A On his claims?

Q Yes.

A Yes.

Q Now, Mrs. Maston, you are presently employed by Nassau County in what department?

A Board of Supervisors.

Q How long have you been there?

A A year and four months.

Q Full time job?

A Yes.

Q Also been working for Mr. Cahn as his secretary-during this period?

A I have been helping him.

Q During the day?

A Yes.

(Pause.)

Not during the day, I just went over to pick up checks to take to the bank.

Q Do you take dictation from Mr. Cahn?

A In the evening he will give me a letter or two or a legal paper.

Q How about in the afternoon?

Aren't you also there on county time?

A No.

I have so much time coming to me from the other position Iheld.

Q You used that to go over to help Mr. Cahn out with his secretarial needs?

A Yes.

Q He doesn't have a secretary at present?

A No, he doesn't.

Q So you take care of that for him?

A Yes.

Q And you take dictation and you type his correspondence? Right?

A Right.

Q And you have submitted -- have you notified the county as to the fact that you are taking comp time or leave time when you go over there to do these things?

A Of course they don't have to know where I am going.

Q But you take them. Sometimes two hours of compensatory time or --

A Sometimes it's sick time. Sometimes it's personal days, sometimes it's a vacation day.

Q You use sick times sometimes to go over to do Mr. Cahn's secretarial work?

A Usually when I am sick, I am sick.

Q But how many hours a week do you spend over there as a secretary?

A Maybe three hours.

Q And you discussed your testimony here at some length with Mr. Cahn; have you not, prior to testifying today?

A Of course. We have been discussing it ever since it started.

Q And in the last week you discussed it with him on a daily basis?

A Daily basis, I -- the past week I haven't seen him that much.

Q Didn't you eat lunch with Mr. Cahn at least once or twice?

A Well, of course. But we don't discuss the cases or my testimony or anything.

Q You just testified, did you not-- that you hadn't seen him?

A I had lunch with him yesterday and I had dinner with him last night.

Q You discussed the case, did you not, and your testimony here today?

A I can't say discussed the case. We talked about personal things, as well.

Q Mrs. Maston, -- all right. You talked about personal things; right?

A Yes.

Q Now, did you discuss the case at all with Mr. Cahn; yes or no?

A Some things came up. You know --

Q In other words you did discuss the case somewhat?

A What you consider a discussion and what I consider a discussion probably are two separate things. We did talk.

Q Did he talk about the allegations?

A No.

Q Did he show you any documents?

A I have prepared those documents for him when I worked in the office all these years. We had gone over the documents before.

Q When?

A In the past year.

Q He showed you these documents and you discussed them with him?

A Yes.

Because I wanted to see him.

Q Yes is the answer?

A Yes.

THE COURT: It's been answered.

Q Now, you were asked, were you not, on several occasions by Mr. Goldman and myself to discuss the case with us so that we might prepare you for your testimony; is that right?

A Yes.

Q And in each and every instance you refused to discuss it with us?

A Your investigators were very rude --

THE COURT: Will you answer yes or no to that?

A Yes.

Q Was Mr. Goldman rude to you? By the way?

A No.

Mr. Goldman was very sweet.

Q You refused to discuss with him?

A Yes.

Q Was I rude to you?

A You weren't rude, but I just didn't want to discuss itwith you.

Q Is it your testimony that when claims would come in from outside vendors you would look at them all before you would show them to Mr. Cahn?

A Yes.

Q Check the form and what. Have you gone through them?

A From outside vendors, yes, usually, because we had other girls in charge of those who should have done their job, and most of the time I took their word for it.

Q With regard to Government's Exhibit 39 in evidence -- I am sorry 39A in evidence, these are claims to the National College of District Attorneys; are they not?

A Yes.

Q Or copies of claims?

A They are.

Q And were these prepared by you at Mr. Cahn's request?

A Yes.

Q You typed them out?

A Yes.

Q He supplied you with the information that's on those claims?

A Yes.

Q Was the original of these signed by Mr. Cahn?

A Yes.

Q And has Mr. Cahn discussed these claims withyou in the last week or two?

A These? No. Not specifically.

Q And you are certain that the originals of those he signed before they were sent out?

A Yes.

Q Now, Mr. Cahn was asking you before about a check that was signed pursuant to a telephone call to Mr. Spinnato. Do you recall that?

A Yes.

Q And if I'm notmistaken he asked you whether or not you recalled him signing a check, and your answer was, "I guess so"?

A Yes.

Q Do you recall him signing it or don't you?

A Yes.

Q Now, when Mr. Cahn would take an advance from the Prosecution Fund for $750.00, I think was the figure he gave you; right?

A Yes.

Q And assuming that he spent the $750.00 on his

travel where he was going; right?

A Yes.

Q So, he would be spending Nassau County's money; right?

A Yes.

Q He's not out-of-pocket anything?

A No.

Q Then, when the county comptroller, pursuant to his claim, repays the prosecution fund, the prosecution fund is paid?

A That'sright.

Q And no one's out anything atthat point?

A Not that I know of.

MR. DRUKER: No further questions.

RECROSS EXAMINATION

BY MR. CAHN:

Q Gladys, ever since December 31st, of 1974, would you say that on an average you had dinner at my home at least once a week or once every two weeks with my family?

A Of course.

Q We are very good friends; aren't we?

A Yes.

Q Have I ever ask you to lie for me?

A Of course not.

Q You would like to see me acquitted; wouldn't you?

A Certainly would.

Q You are a widow; are you not?

A Yes.

Q What time did the investigators from the United States Attorney's Office come to your apartment?

MR. DRUKER: Your Honor, I am going to object to this now as getting a little irrelevant.

MR. CAHN: Your Honor, I submit that the question was asked about talking to the United States Attorney, and Mrs. Maston answered.

THE COURT: All right. I will let you ask it.

Q What time did they come?

A At nine o'clock.

Q And did you tell them that you wanted a lawyer?

A Yes.

MR. DRUKER: I think I am going to object to the leading at this point. Can Mrs. Maston testify?

A Mr. Cahn, I live alone. My telephone is unlisted because I have had problems over the years --

THE COURT: What question is this? I don't think there is a question.

THE WITNESS: He told me to say what happened and why.

THE COURT: No, he didn't.

All right is there any more re-cross examination?

MR. CAHN: No.

MR. DRUKER: I have no --

MR. CAHN: Excuse me.

CONTINUED RECROSS EXAMINATION

BY MR. CAHN:

Q 39A, Gladys, you see a signature of William Cahn (handing to witness)?

A He asked me if it was a copy.

Q You said you remember that I signed the original. Do you remember that? Specifically.

A Not specifically, no.

But all the originals, you signed.

Q And the original was sent to the National College of District Attorneys; was it not?

A Yes.

Q And "OK, DH," and the initials, "R.S.," did you put that on there?

A No.

Q And therefore, Mrs. Maston, those initials would have to represent a copy of a claim that went to the National College?

A Yes.

THE COURT: I don't follow that or understand how it gets up to be recross or a statement by you as rather a question to the witness?

MR. CAHN: It's still the Government's witness, Your Honor.

MR. DRUKER: I don't think so, for these.

THE COURT: Nobody owns a witness.

MR. CAHN: Iwill withdraw the question.

THE COURT: All right.

MR. DRUKER: May I just have one further question?

THE COURT: Yes.

RE REDIRECT EXAMINATION

BY MR. DRUKER:

Q One or two questions.

You testified on cross-examination that money was returned to Nassau County pursuant to Mr. Cahn's instructions from outside entities; is that correct?

A Yes.

Q Prior to March of 1974, did this ever take place?

A Yes.

Q How many occasions?

A I couldn't say.

Q Could you give a ballpark figure?

A Half a dozen times a year.

Q That he would tell you "Ihave a check coming in from the National District Attorney's Association. When it comes in give it to the county"?

A Yes.

Q And do you have records to reflect that?

A I don't, personally, no.

Q The document which was marked as Defendant's Exhibit A in evidence, that was a copy of your end of a receipt from the county treasurer?

A I don't recall what it was.

Q Showing --

THE COURT: This is re-re-direct. I don't know how this is related to recross?

MR. DRUKER: Iam sorry, Your Honor. It's something that I should have gone into on re-direct.

Q Mrs. Maston, is that a copy of a receipt? (Handing to the witness).?

A Yes.

Q Where were those filed, generally; your office copies?

A You mean in the District Attorney's Office?

Q Yes.

A In the file cabinet behind the desk that I occupied.

Q Under what heading?

A Under the prosecution fund there was a large folder, maybe two folders, with breakdowns in them.

Q And is this something that was taken by you or Mr. Cahn when he left office or did it remain there?

A It should have remained there.

Q You say that there was about half a dozen a year that would be on file?

A That's correct.

Q With regard to those particular checks, when they came in, who would endorse them and what would happen to them?

A Mr. Cahn, and they would be cashed.

Q If you are able to tell --

THE COURT: You are standing in Mr. Cahn's way now.

MR. DRUKER: I apologize.

Q Mrs. Maston, did anybody endorse these checks making them payable to Nassau County?

A Sometimes Mr. Cahn would. It depended on the amount of the check.

Q So then some of these checks would say, "Pay to Nassau County Treasury"?

A Yes.

Q And would this be a majority or less than a maj-

ority of instances?

A Oh, half and half.

I couldn't say definitely. I don't recall.

Q Did it ever strike you as strange that these checks were cashed and cash was delivered to rather than endorsed over?

A I told you I made a mistake once, I could have made a mistake a number of times.

MR. DRUKER: No further questions.

THE COURT: You are excused, Mrs. Maston.

We will take our morning recess now. The jury can go back to the jury room. Don't talk about the case. We will be about five minutes.

(Whereupon the jury left the court room at 11:25 A.M.)

(Whereupon a five minute recess was taken until 11:30 A.M.)

THE COURT: On this question of the other similar acts, it seems to me in the light of count 46 that the London trip and the Hawaii hotel room are admissible on the tandem knowledge I am going to receive those.

MR. CAHN: I take exception to Your Honor's ruling.

THE COURT: Is your next witness ready?

MR. DRUKER: Yes, Your Honor.

THE COURT: Bring in the jury.

MR. DRUKER: The Government calls Mr. Ron Briggs.

THE COURT: Just wait a minute until the jury returns.

(Whereupon the jury entered the court room at 11:35 A.M.)

THE COURT: You may be seated.

Mr. schwartz tells me that one of the jurors asked about taking notes.

I take notesbecause I can't remember that well. I don't object to jurors taking notes, but two things relate to that; first, somebody takes notes, doesn't have any better claim to recollection than any one else. You can't use that to establish yourself as any superior juror, and;

Second, if there is any question, we have a court reporter who is taking everything down. We have the documents, and those should be the things to govern in your deliberations. The notes are just for the personal convenience for anyone who takes them.

Go ahead, Mr. Druker.

Call your next witness.

MR. DRUKER: The Government calls Ron Briggs.

R O N B R I G G S, having first been duly sworn by a clerk

109 of this Court, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: My name is Ron Briggs,.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Riggs,would you please state the place and nature of your present employment?

A Director of training for the Louisiana District Attorney's Association in Baton Rouge.

Q How long have you been so engaged?

A Since 19-- October of 1964.

Q You are an attorney?

A I am.

Q Prior to that, can you tell us what you did?

A Executive Director of the County Attorney's Association in Phoenix, Arizona.

Q And with regard to the Arizona County Attorney's Association, was it a recipient of any L.E.A.A. Fund?

A Yes, it was.

It was funded by L.E.A.A. Grant.

Q By "L.E.A.A.," weare talking about the U.S. Department of Justice Law Enforcement Administration?

A Yes.

Q Assistance Administration, I should say.

Now, was your association funded in whole or in part

back then by the L.E.A.A.?

A It was funded in part, but I would say 95% of funding was; dues made up five percent.

Q Do you know the defendant, William Cahn, seated to the right at the defense counsel table?

A Yes.

Q Did he have any direct affiliation with you?

A Not direct affiliation, but he did speak with us at conference.

Q When did he speak for you?

A That would have been February of 1974.

Q Now, where did this speech take place?

A The speech was in Casa Grande, Arizona.

Q Did Cahn travel alone or accompanied by anybody?

A I believe Mr. Joe Spinnato traveled with him.

Q Now, did you speak with Mr. Cahn prior to his going out there to deliver this speech?

A On the telephone only.

Q And during the course of that conversation -- withdrawn.

The speech that Mr. Cahn gave, was that part of the L.E.A.A. Grant?

A Yes, sir.

Q Pursuant to the L.E.A.A. Grant?

A Yes, it was.

Q And to yourknowledge, was anything ever said to Mr. Cahn with regard to that?

A My best recollection is that during the telephone conversation it was mentioned simply that the payment would be pursuant to L.E.A.A. guidelines.

Q So you didn't come out and say, "This is a L.E.A.A. Funded Project" directly; is that right?

A That's not my recollection.

Q But you mentioned to him that payment would be in accordance with L.E.A.A. guidelines?

A Yes.

Q Andwaspayment to your knowledge, made in accordance with L.E.AA guidelines?

A To my knowledge it was, yes.

Q And he was subsequently issued a check?

A Yes.

Q And was that pursuant to any claim that he submitted to your organization?

A Yes.

All payments were made on the claims submitted by the claimant.

Q Iam going to showyou Government's Exhibit 10A for identification, that's several documents on your right,

and Iwill ask you if you recognize those and are able to identify them as being business records of the Arizona County Attorney's Association kept and maintained as such?

A Yes, they would be.

(continued next page)

Q What are those documents, generally?

A This is a travel expense claim, and a copy of check and payment of that claim to Mr. Cahn.

Q Now, there's another document on your left. Is that a document which you brought with you yesterday or today?

A Yes, it is.

Q What is that?

A It's a letter from Mr. Cahn requesting payment on this claim.

MR. DRUKER: Your Honor, I will ask that the separate letter, after showing both exhibits to counsel, be incorporated as part of 10A, and I will offer 10A into evidence.

THE COURT: All right.

(Whereupon, the documents were shown to Mr. Cahn.)

MR. CAHN: No objection to these.

THE COURT: Let it be marked as requested.

THE CLERK: Government's Exhibit 10A marked in evidence.

MR. DRUKER: Thank you, sir.

Q Now, Mr. Briggs, the check to Mr. Cahn was in the amount of $443; was it not?

A This is correct.

Q What was the breakdown on that, if you recall?

A It was for coach air fare in the amount of $308, and an accountant honorarium for $135.

Q Now, with regard to the $135, was that the maximum or were you allowed to pay more pursuant to whatever guidelines or policies you have?

A That was the maximum permitted.

Q Now, back at that time, were there any policies or regulations or guidelines, to your knowledge, of the Arizona County Attorney's Association or governing the Arizona County Attorney's Association which would have allowed you or prohibited you from paying that claim, had you known Mr. Cahn was, in fact, being reimbursed, causing his air fare to be paid by Nassau County?

MR. CAHN: Objection.

THE COURT: Well, I think the witness operating under LEAA guidelines can testify about it.

MR. DRUKER: I will lay a better foundation if that is what the objection is.

THE COURT: All right.

Q First of all, Mr. Briggs, does your association have any written or oral policies or fiscal guidelines; yes or no?

or no?

A The association itself?

Q Yes, sir.

A No.

Q All right. With regard to the LEAA funds, were you aware of any LEAA policies or guidelines which governed the expending of the LEAA grant monies?

A Yes.

Q And, did Mr. Cahn, at any time, ask your permission to submit the claim for air fare or did he seek to be paid for air fare although he was also being paid for his air fare by another entity?

A We never discussed that.

Q Did Mr. Cahn tell you the air fare had been paid for or was being paid for by another entity?

A No.

Q Now, with regard to the policies or guidelines that you mentioned which governs the expenditures of LEAA fund, is it your understanding that they would have allowed or prohibited you from paying for Mr. Cahn's air fare, had you known that another entity was to pay?

MR. CAHN: Objection as to what his understanding would have been.

MR. DRUKER: Maybe --

THE COURT: Suppose you take what the guidelines said?

MR. DRUKER: I will go back one step.

Q Were these guidelines in writing or were they orally communicated to you?

A Well, the guidelines are written, but I had discussed them orally, you know.

Q Is it recent discussions or discussions back prior to the time of this claim?

A Oh, discussions prior to the time of this claim, yes, sir.

Q What were the guidelines or policies that you regard in that regard?

A That you could not pay a claim to one who is paid by another source to attend themeeting.

MR. DRUKER: Thank you, sir. I have no further questions.

MR. CAHN: Your Honor, I am going to move to have the last question and answer stricken on the ground the question was improper and the answer is hearsay.

THE COURT: Well, I don't think it makes much difference as long as we already have a witness on the LEAA guidelines.

MR. CAHN: That's a characterization, your Honor.

THE COURT: I will deny the motion.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Briggs, you testified that I had Joseph Spinnato with me.

A Yes, sir.

Q And he, in no way, participated in the program; did he?

A No, sir.

Q And he was not paid either a consultant's fee or an honorarium or a reimbursement of expenses?

A No, sir. Not at all.

Q As a matter of fact, though, Mr. Briggs, isn't it so that during our stay -- where was this? Casa Grande?

A Yes. Francisco-Grande Hotel.

Q Where the San Francisco Giants train?

A Yes. That's right.

Q And isn't it a fact that during our discussion some time during that period of time you were told that Mr. Spinnato and I were there on some -- were in Arizona on some county business?

A I don't recall that conversation, sir.

Q Was it you who drove us up to Phoenix?

A Yes, sir.

Q And did you not take us to the Double Tree Inn?

A Yes, I did.

Q And during that period of time -- and isn't that where we stayed. rather than the Casa Grande the following night?

A Thenight following your appearance, yes, sir.

Q Wasn't that as a result of a conversation between you and I stating that we had business in Phoenix that had to be taken care of?

A That might be quite possible. I just don't recall, specifically, sir.

Q And you never asked whether or not the county was paying for my trip to Casa Grande?

A No, sir.

Q And you said that you had a telephone conversation with me where you said that -- well, tell us again what you said?

A It was my recollection that during the telephone conversation I merely stated that all payment would be pursuant to LEAA guidelines.

Q Pursuant to LEAA guidelines. And you told the Court and jury, did you not, that you don't believe you said

that LEAA funds were going to be used to pay?

A I don't recall making specific statements to that effect.

Q And you said to the Court and jury, Mr. Briggs, that maybe five per cent of the Arizona County Attorney's Association -- and by the way, the County Attorney is like a District Attorney?

A That's correct2

Q You told us that the Arizona County Attorney's Association was funded in part by private funds?

A By dues, yes, sir.

Q Pardon?

A By dues from the members, private, yes, sir.

Q And therefore, it is within the realm of possibility that the payments for some speakers could have been used out of those funds?

A No, sir.

Q Not possible?

A No, sir. But the claims, the money was drawn from the training grant.

Q But private money was available; was it not?

A To a limited degree, sir.

Q To a limited degree or to any degree, private money was available?

A Yes, sir.

Q And do you know of one of the guidelines of LEAA which requires other monies to be used, if available?

A Sir, it was my understanding that the certain percentage of the money would be used and it was.

Q I didn't hear you, Mr. Briggs.

A A certain percentage of the certain things that when you put on a conference that you can't pay with LEAA funds, and you do use for private funds to take care of those aspects of the conference.

Q But do you know of a regulation that where other funds are available, LEAA funds should not be used?

A It's my understanding that is the case. Certainly not totally.

Q And when you stated to me that to the best of your recollection that when you said that payment would be made pursuant to LEAA guidelines, it might have been with private funds pursuant to LEAA guidelines?

MR. DRUKER: Objection.

THE COURT: Overruled.

A No, sir. Not in this case. No, sir.

Q To me, Mr. Briggs?

A No. I didn't say --

Q I didn't say you said.

A Yes.

Q When you said that payment was to be made pursuant to LEAA guidelines to me, it could have been private funds being used and paid, but in accordance with guidelines set down by the LEAA?

A Well, that could have been your understanding. I can't vouch for that.

Q What section of the guidelines prohibits due reimbursement?

A I can't tell you a section, sir.

Q Did you read it?

A I haven't read it recently, no.

Q When did you read it?

A After this conference some time.

Q After the conference?

A Yes.

Q Not before?

MR. DRUKER: I think that the answer after implies not before.

THE COURT: No. It is not necessary.

Q Did you ask that I give up part of my salary as District Attorney of Nassau County in order to speak at your conference, and receive a consultant fee?

A No, sir.

Q What is your interpretation of the word "compensation"?

A Compensation?

Q Compensation.

A Being paid for work being performed.

Q Wages?

A Yes.

MR. CAHN: No further questions.

Just a moment, please.

BY MR. CAHN:

Q Now, Mr. Briggs, if I --

You are an attorney?

A Yes, sir.

Q If I had borrowed the money -- excuse me. Withdraw the question.

If the defendant borrowed the money in order to pay for his expenses for the trip to Casa Grande, and when he received the checks from the Arizona County's Attorney and repaid that money he borrowed, would you say that there was due reimbursement?

A No.

Q And would it be of any concern to you as to the method of repayment to the person borrowing?

A No. I don't think so.

Q Well --

A No. I don't follow your question. I am sorry.

Q All right. If I may make it clearer: If I borrowed $500 -- if the defendant borrowed $500 to attend the trip at Casa Grande, and the expenses for the sake of this hypothetical were $500, and I after -- and the defendant, after receiving the check from you returned the $500 to the party from whom he borrowed. Would you say that that was due reimbursement?

A No, sir.

Q And if it was decided that the money be paid, the $500 be repaid to the person from whom it was borrowed at $100 a month, would that mean anything to you?

A It would be of no concern to me.

MR. CAHN: Thank you, sir.

THE COURT: Is there any redirect?

MR. DRUKER: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Briggs, do I understand correctly that other than the consultant fee, that all you paid for with regard to Mr. Cahn's expenses was his air fare?

A No, sir. There was -- I think his accommodations were placed on a master account on the hotel,

and the association picked up the account.

Q You paid for his hotel separately, but this was not on the claim?

A Not on the claim. That is right.

Q Other than that, air fare was the only thing that that check covered?

A Yes.

Q Now, I will ask you a hypothetical. An individual calls up his home jurisdiction or home county, if you would, to pay his air fare; in other words, they paid the travel agent or the airline. Then he travels on business for the Arizona County Association under the LEAA grant, and then he returns to his home county, submits a claim to the Arizona Attorneys' Association for his air fare, and a check is issued to him. Would you say that's due reimbursement?

A As we submit the check to him, I would think so.

Q Now, you have before you Government's Exhibit 10A in evidence, and I direct your attention to the second page of that exhibit. What are the documents that are included on that page?

A The second page includes a copy of the check that was issued, and at the bottom, a description of this -- what it was for.

Q And is there a notation on that bottom portion?

A Yes, sir.

Q What does it say?

A "Training grant travel expenses, New York to Phoenix, Casa Grande, and consultant fee."

Q Would you tell the jury whether or not an original or the copy of a document was sent to Mr. Cahn at that time?

A Yes, sir. This would be an exact copy.

Q Would the check have been attached to that bottom or affixed to it?

A I believe so. I don't specifically recall. We normally did that, yes.

Q You normally would send along that stub or what have you. Is that a tearaway sheet?

A Yes.

MR. CAHN: And was --

MR. DRUKER: I am sorry. Just one further question.

Q Did Mr. Cahn return that check to you, at any time?

A No.

Q After he got it, did he send you any money back?

A No.

RECROSS-EXAMINATION

BY MR. CAHN:

Q But it was sent after the claim was submitted; was it not?

A Yes.

Q And this hypothetical, in reference to the air fare, if the air fare to the particular travel agency was a loan, and the loan was repaid, there would be no due reimbursement either?

A At that point I would consider that so.

MR. CAHN: Thank you.

THE COURT: You are excused, Mr. Briggs.

(Whereupon, the witness was excused.)

MR. DRUKER: The Government calls Mrs. Erna Haynes.

ERNA HAYNES, having first been duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Erna Haynes.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Is that Miss or Mrs.?

A Mrs. Erna Haynes.

Q Mrs. Haynes, would you please tell the jury the place and nature of your employment?

A Yes. I work for the accounting department of the Dunes Hotel in Las Vegas.

MR. CAHN: I didn't hear that.

MR. DRUKER: She said she works in the accounting department of the Dunes Hotel in Las Vegas.

THE COURT: Please speak loud enough so that everybody in the courtroom can hear you.

Q What do you do there?

A I am Assistant to the Associate Comptroller in the Accounting Department.

Q For how long have you been there?

A September, 1966.

Q Now, Mrs. Haynes, I am going to show you wh

has been marked as Government's Exhibit 46, and other than the cover letter on top, I will ask if you recognize those as being business records of the Dunes, kept and maintained as such in the ordinary and usual course of business?

(Handing to witness)

A Yes, they are.

Q And do you have the originals of those records with you?

A Yes, I have.

Q And have you had occasion in the last twenty-four hours to prepare those photocopies with the original?

A Yes, I have.

Q Are they true and accurate copies in every respect?

A Now, yes.

(continued next page)

Q First of all, would you tell the Court and jury what those records are?

A These are hotel folios representing the stay of three different guests at the Dunes Hotel during a period from April 21, 1974, through the 24th, 1974.

Q And who were those three individuals, according to the records?

A Well, in here, William Cahn, Martin -- is it Massler?

Q Massel.

A Massel, yes. M-a-s-s-e-l. And Joseph Spinosso?

Q Spinnato.

A Spinnato.

Q Now, I am going to offer these records into evidence after showing them to Mr. Cahn. I think Mr. Cahn will agree that the cover letter is irrelevant.

(Whereupon, the documents were shown to Mr. Cahn.)

MR. DRUKER: All right. Perhaps what we can do is we will mark Mr. Cahn's and Mr. Spinnato's room bills into evidence, and the cover letters and Mr. Massel's bills could be for identification, if that is all right with the Court?

THE COURT: Yes.

MR. DRUKER: 40-C-1 in evidence.

THE CLERK: So marked.

Q Now, referring back to Exhibit 40-C for identification, Mrs. Haynes, and asking you to look at the page of that document, it's not in evidence, and without stating what that document is, I will just ask you, is that also a business record of the Dunes Hotel kept and maintained as such?

A Yes, it is.

Q Now, showing you again what is now Government's 40-C-1 in evidence, I will ask whether or not there are any notations on those records which reflect whether the rooms were paid for or charged to anybody, and if so, would you explain what the notations are and what they signify to you?

A This particular folio was not paid for. It was transferred to what we call a complimentary account, which means that -- and also on the folio it's indicated "RFB" which means that it was authorized for room, food and beverage to be comped.

Q In other words, freebees?

A It was free to the guest.

Q And is there any question about that?

A None whatsoever.

Q These rooms were not paid for by anybody according to those records?

A No, sir.

Q If they were, would they be noted?

A It would be, say, transferred -- instead of transferred to the committee it would have been marked "paid."

Q In the ordinary course of business?

A Yes.

MR. DRUKER: I have no further questions.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mrs. Haynes, when a room is complimentary, when a hotel room is complimentary, at check-out time, does the customer or the guest, if you will, get the bill?

A No.

Q He gets nothing; isn't that correct? Unless there are specific charges, personal charges that he might have incurred; is that correct?

A If a guest is being comped, it's complimentary. If he's being comped, there is no reason for him to get a copy of the charge, because usually he doesn't even have to have to check out of the hotel. He knows in advance this is going to be comped and he has no reason to get a record of it, unless he so desires for his own use.

Q And if he doesn't know he is going to be comped

and goes to the cage to pay his bill that has been arranged for complimentary treatment, he will not get a bill; isn't that correct?

A He would not go to the cage. He would go to the front desk.

Q I am sorry. Okay. Isn't that correct?

A If he is at the front desk at the time he is informed, they may give him a copy of the bill.

Q Informed of what?

A That it's being comped.

In other words, if a guest went to the front desk to pay his account --

Q Yes?

A (Continuing) -- although this is indicated at the moment of check-out he is going to be comped.

Q And do you know, of your own knowledge, that when a room is comped the guest gets a copy of the bill?

A If he wishes one.

Q If he wishes one.

Now, do you know Dave Goldstein?

A Yes, sir.

Q Who is he?

A He is one of the executives at the Dunes.

Q And was it not -- weren't the complimentary

rooms arranged through him?

A He -- it's indicated that he authorized it to be comped.

Q Do you know who William Raggio is?

A I am familiar with the name, yes.

Q Who is he?

A He is a gentleman that lives in Las Vegas.

Q Do you know of his position in Nevada?

A Yes. He is -- well, he has had several different offices. He does work.

Q May I suggest that he was the former District Attorney of Reno, Nevada, and a candidate --

MR. DRUKER: If she knows. I think the question was does she know what positions he held.

A Yes. I know that he has run for political office in the State of Nevada, and at one time he was in the District Attorney's Office.

Q Now, of course when you talk of complimentary food and beverage, that's if the food and beverage is used at the Dunes?

A Yes.

Q If the guests eat at some other restaurant or some other hotel, the Dunes will not pick up that meal; isn't that correct?

A That's correct.

Q Have you ever been at the checkout counter; the cashier's counter?

A Yes, sir.

Q Could you tell me this -- let me ask you this -- I will withdraw that question.

How long a period of time does it take, insofar as the Dunes Hotel is concerned, to finalize a bill after checkout?

A (No response)

Q I hope I make myself clear.

A You mean, if a guest checks out of a hotel, at what point is the bill finalized?

Q Yes.

A At the checkout time.

Q At the checkout time?

A Yes.

Q Well, if a guest checks out of the hotel on May 10th and pays a bill of $100, at the end of the day, on May 10th, is that bill in its final form?

A Yes.

Q Now, if a guest checks out on May 10th, and his bill is complimentary, at the end of the day, on March 10th, is that bill also in its final form?

A Yes.

Q And if the bill indicates that a few days have passed after the guests have checked out, the bill indicates that the bill was in its final form after three days or after four days, would that indicate anything to you?

A I don't understand that question, sir.

Q You told us, Mrs. Haynes, that if a guest checks out on the 10th, whether or not he paid the bill on the 10th or the room is complimentary, at the end of the day of May 10th, that bill is in its final form.

A If we know that the person has checked out of the hotel?

Q If you know that the person has checked out.

Now, if the person checked out, if you know the person checked out, and the bill indicates that the last entry is on May 10th, but the last charge -- let me put it that way, the last charge is on May 10th, but the bill is not actually finalized until May 15th, would that indicate anything to you?

A Well, it would indicate that somebody at our front desk has not been checking their rooms.

Q Could it also indicate, Mrs. Haynes, that there might have been a problem with the bill?

A No.

Q It could not so indicate?

MR. DRUKER: Asked and answered.

THE COURT: I will allow it.

A Not to my knowledge, no.

Q May I ask you this: If there is an actual checkout on May 10th, and there is a question as to whether or not the bill was complimentary, let us, for the sake of this hypothetical, indicate that the guest states that "My bill is complimentary" and the clerk says, "There is nothing on your bill to indicate that, sir," what would happen in such a case?

A The front desk clerk would have to get some authorization from one of their superiors indicating whether or not they were to get paid, have it billed to him, or someone was going to comp it.

Q And if it was decided that the bill, itself, was to be billed to him, would it not be days afterward?

A No, sir.

Q Before the bill is finalized?

A No, sir.

Q It would not?

A The night auditor, if someone checks out and it has been indicated that the bill is to be billed to him, the night auditor will close out that bill at the end of his

shift, which may possibly be dated the next day, because this is after midnight, and it would be sent to our account receivable department in the next morning's work, which would be on your hypothetical, May 10th.

On the morning of May 11th, it would go or the accounts receivable uncoded it to put in their computer, and a statement would be sent out the following day.

Q And this is the procedure as followed by the Dunes Hotel?

A That's correct.

Q So if I understand you correctly, even though the guest insists that his room is complimentary and there is a debate about it, and thereafter the individual decides, "We will sign the bill." You say, "We will send it to you," and in the meantime check out to see if it's supposed to be complimentary.

A The clerk would check to see if it's complimentary, but they haven't the authority to make that decision.

THE COURT: You are getting into a lot of hypotheticals. Can't we stick to facts?

MR. CAHN: Well, there is --

THE COURT: Well, go to the facts.

Q What does TRCR mean?

A Transfer credit.

Q And this is dated April 26th; is it not?

A That is correct.

Q When was the last date of stay?

A On this one, the last charge was April 23rd.

Q Now, is there a reason why transfer credit -- this is exactly what I was trying to determine. Is there any particular reason why transfer credit is on April 26th?

A Yes. No. 1, on the margin here it's marked "VPH." This room was being held until the checkout date, indicated as the 25th, which would have been the last date that the roomer stayed there. Housekeeping puts VPH meaning vacant per housekeeping, which meant the guest did not check out at the front desk, but housekeeping says that room is empty. Therefore, at that time it would be held in as said-vacant per housekeeping, but the reservation says he's to be here until the 25th, he has a reservation for that period of time and therefore we better hold the room because he may be coming back.

At the end of the 25th they checked it out, and the night auditor on the 26th transferred the credit to the complimentary account.

Q And there is no signature on either of the bills?

A To show that it was to be billed?

Q It wasn't supposed to be billed. It was strictly --

A At the moment of check-in, it was indicated it was to be a complimentary account.

MR. CAHN: Thank you.

THE COURT: Is there any redirect?

MR. DRUKER: Just briefly.

REDIRECT EXAMINATION

BY MR. DRUKER:

Q If the individual checks out on May 10th, checks out of a complimentary room, and he asks for a keep of the bill, would it have been the notations TRCR on it, transfer credit at that point?

A Not necessarily, because if he says "I am checking out. I would like a copy of my bill" the copy would be the original front flimsy on -- what we call "flimsy" on the folio, and he would say, "Well, I am checking out now. I would like a copy of the bill."

We would tear it out and give it to him without having that side border showing that it has not been cleared and that it was still an open account at that point. Perhaps after he walked out the front desk clerk may say "Well, this is comp. We will go and transfer it upstairs on

the comp account.

Q How about on that May 10th transfer account, and on June 10th he wrote away asking you to send him a copy of that room bill. Would it have the TRCR on it?

A Yes. Because it would have been transferred at the end of that day's business, if not before.

MR. DRUKER: Thank you very much.

THE COURT: All right, you may step down. You may step down.

(Whereupon, the witness was excused.)

MR. DRUKER: Your Honor, this is a good time for a mid-morning break.

THE COURT: We had it. You must have been busy. A five minute stretch can be made up at the end of the trial.

MR. DRUKER: My recollection is refreshed to that. We did have a break.

(continued next page)

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MAY 13 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA :

-against- :

WILLIAM CAHN, :

Defendant. :

----------x

75 CR 645

United States Courthouse
Brooklyn, New York

May 5, 1976
10:00 a.m.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate stenographic transcript of my notes.

Perry Auerbach

Official Court Reporter
U.S. District Court

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
Assistant United States Attorney

WILLIAM CAHN, Pro se

NEIL CAHN, ESQ.
and
HAROLD BOGIN, ESQ.
Attorneys for Defendant

- - -

I R A T H E O D O R E , having first been duly sworn by a Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: Ira Theodore.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Theodore, would you state the place and nature of your present employment?

A I am employed by ATS Travel Limited at 70 Glen Cove Road, Roslyn Heights, New York. I am Vice President of the company.

Q For how long a period of time have you been employed by ATS Limited in that capacity?

A Six years.

Q And does ATS have any affiliate entity or corporation?

A Yes. A company called Group Consultants International, Limited.

Q Do you know the defendant William Cahn?

A Yes.

Q For how long a period of time do you know him?

A Approximately for about five years; five and a half years.

Q Did you know him to be District Attorney of Nassau County from at least 1970 through '74?

A Yes, I did.

Q Did either or both ATS and Group Consultants do business with the Nassau County District Attorney's Office?

A Yes, we did.

Q And generally speaking, what was the nature of the business?

A Travel for the District Attorney's Office.

Q On business trips, I take it?

A Yes.

Q And sometimes personal trips for possibly the District Attorney ormembers of his staff?

A Yes.

Q And did you also handle group trips?

A Yes, we did.

Q Did you handle any group trips for the District Attorney's office in the years 1970 through '74?

A Yes, sir.

Q Now, are you familiar with an entity known as the National District Attorney's Association?

A Yes.

Q And did you ever have occasion to handle group travel for that organization?

A Yes, we did.

Q And I take it you handled group travel for organizations other than those we have already mentioned; is that correct?

A Yes.

Q Now, Mr. Theodore, I will show you a group of documents marked as Government's 1-B through 46-B for Identification and I will ask if you recognize those, and are able to identify them as being business records of ATS and Group Consultants, Limited, kept and maintained as such in the Ordinary and usual course of business? (Handing to witness).

A Yes.

Q You are familiar with those records?

A Yes.

Q And generally speaking, what are they?

A They are reservation records and invoices and records of payment for various trips.

Q And in all cases are airline tickets attached?

A Yes, they are.

Q These trips would pertain to whom, in general?

A Basically, William Cahn and other members of his group.

MR. DRUKER: Your Honor, I am going to offer

these into evidence after showing them to Mr. Cahn.

(Whereupon, the documents were shown to Mr. Cahn.)

MR. CAHN: No objection, your Honor.

THE COURT: The Clerk will please mark them.

MR. DRUKER: I am not going to be using those for a while. If the Clerk wants to mark them later on. 1-B through 46-B, there are maybe some that just aren't there.

Q Now, Mr. Theodore, did Group Consultants International or ATS, to your knowledge, handle a trip to London, England and Paris, France, and Brussels, Belgium -- is it?

A Yes.

Q (Continuing) In or about November 29th to December 13, 1971?

A Yes, we did.

Q And who arranged or organized this trip, if you know?

A On behalf of our company or for the National District Attorney's Association.

Q First, on behalf of your company.

A My business partner, Arnold Tolkin and myself.

Q And on behalf of the NDAA?

A Primarily, I believe, Mr. Cahn.

Q Do you recall roughly how many individuals went

on this trip?

A Well, to London, approximately 80 or 90, and then there was a post-convention to the European continent to about 30 or so.

Q On occasion -- I am talking generally when individuals organized large groups of people to go on a trip, are they given any benefits from time to time?

A That many times is common in the industry, yes.

Q Is there any title or designation given to this individual, sometimes?

A It would be for the tour organizer. It could be for the organizer.

Q What benefits in general are given, and I take it it would vary?

A Courtesy rooms, trips, courtesy cocktails. A wide variety.

Q Discounts sometimes?

A Could be.

Q Credits on amounts that are owed to the company?

A Yes.

Q Did Mr. William Cahn ever obtain benefits from Group accounts or ATS as a tour operator or tour guide?

A Yes.

MR. CAHN: Objection. Now we are talking about

London.

THE COURT: This is the one I ruled on before we got the jury in. I overrule your objection. You have an exception.

MR. CAHN: Thank you.

Q Now, I am going to show you some document, and by the way, this printing on the back is mine. Do you recognize those and can you identify them as being photocopies of business --

THE COURT: Ask him what they are.

A These are worksheets pertaining to the trip to London and the Continent, that you referred to.

Q Were these business records of Group Consultants?

A Yes, they are.

Q Now, first of all I will ask you from your own independent recollection, do you recall how much Mr. Cahn paid for that trip to Europe?

A Three hundred some-odd dollars. $345, I believe.

Q How much did the other individuals who went on that trip pay, if you know what the regular price?

A The regular price was varied based upon one or two weeks. $700 to $1200, approximately.

Q Did William Cahn go for one or two weeks?

A Two weeks.

Q Alone or with his wife?

A With Mrs. Cahn.

Q Do you recall what the single rate was for that two-week trip? In other words, how much a person traveling alone would pay, approximately?

A Give me a moment and I can tell you. I can't find an instance on the worksheet. Approximately $1100.

MR. CAHN: Approximately what?

MR. DRUKER: $1100.

A Approximately $1100.

MR. DRUKER: Now, I will show these to Mr. Cahn, your Honor. Then I am going to offer these documents into evidence.

THE COURT: Yes.

MR. CAHN: No objection.

THE COURT: Mark them.

THE CLERK: Marked Government's Exhibit 62 in Evidence.

MR. DRUKER: By the way, if Mr. Cahn has no objection, I will just put a line through my notations.

MR. CAHN: No objection.

Q Now, Mr. Theodore, I will ask you to examine those records which are now in evidence and ask you to tell the jury, if you will, how much Mr. Cahn paid on behalf of

himself and his wife on that trip to Europe.

A $395.

Q And that consists of a deposit and a final payment?

A Yes.

Q How much was the deposit?

A $50.

Q And the final payment?

A $345.

Q And then, to the right of that there is a notation, is there not, on special price and some calculations?

A Yes.

Q And what does that represent?

A It represents the total price of the trip for Mr. and Mrs. Cahn, less the amount that was paid on the trip.

Q And the $895 figure that is there, what does that represent?

A That represents the amount that was not paid on the trip.

Q So then the total that Mr. Cahn paid was $395?

A Yes, sir.

Q Did he ever, to your knowledge, pay the $895?

A No.

Q Now, after Mr. Cahn arrived back in the States

from that trip did he have occasion to request anything from you relating to that trip? Any documents?

A Well, I believe an invoice and memo was sent out to Mr. Cahn on behalf of himself and someone else from his office that requested it.

Q And showing you a group of five documents, I will direct your attention to the third page and I will ask if you recognize that document and, if so, to tell what it is, just generally.

A It is our corporate letterhead, and dated December 13th, and it's an invoice for what the cost of the total two-week trip should have been.

Q You sent this to Mr. Cahn or someone in his office?

A Yes.

Q Or the original of that, I should say?

A That is correct.

MR. DRUKER: Your Honor, after showing this to Mr. Cahn, I am going to offer it into evidence.

(Whereupon, the documents were shown to Mr. Cahn.)

MR. DRUKER: There's no objection, your Honor.

MR. CAHN: May I request the jury be instructed that this is not part of the indictment.

THE COURT: All right. I will tell them that.

This London trip is not one of the 46 counts in the indictment. It is being offered by the Government as a transaction similar to Count 46, and therefore having a bearing on Mr. Cahn's knowledge and intent, and you won't consider it as part of anything to be charged with, as a matter of your final verdict. I will give you further instructions on this at the end of the case.

THE CLERK: This document is marked Government's Exhibit 63 in Evidence.

Q Did Mr. Cahn or anybody else on his behalf, to your knowledge, ever pay that $1,050 invoice?

A No.

MR. DRUKER: Your Honor, with the permission of the Court, may Government's Exhibit 63 in Evidence be given to the jury?

THE COURT: Yes. Pass it around.

(Whereupon, Government's Exhibit 63 was passed around the jury.)

THE COURT: I am going to let Mr. Druker continue his questioning. If you can't both listen and read, then stop the reading until you have an interruption.

Q Mr. Theodore, do you recall or did ATS or Group Consultants handle a convention of the National District

Attorney's Association to Honolulu, Hawaii back in March of '71 or any portion of that trip?

A A small portion of it. We were not the agent for the entire convention.

Q For what portion of the trip did you handle, and if I suggested to you the two organizations were one, a week in Honolulu, and the other --

THE COURT: Do you have to tell him?

MR. DRUKER: Excuse me?

THE COURT: Do you have to tell him? You asked him a question, then you tried to tell him the answer. I think we better see what he knows.

Q Do you know what the portions of that trip were?

A Yes. There was a trip to Hawaii for Mr. and Mrs. Cahn and certain other members; other District Attorneys in the area who handled the trip.

Q Did you handle the entire trip or a portion of the trip, to your knowledge?

A To my knowledge, a portion of the trip, yes.

Q Do you recall for how long that trip was?

A Without looking at the records, I couldn't.

(Continued on next page.)

BD 1/2

Theodore-direct

Q All right, Mr. Theodore, if I suggest to you that there was approximately a week in Honolulu and approximately a week in the out islands, would that refresh your recollection as to the nature of that?

THE COURT: The better way would be to show him something But is your recollection refreshed?

THE WITNESS: Yes.

THE COURT: Is that what it was?

THE WITNESS: Approximately a two-week trip, yes.

Q Are you able, from your independent recollection, to tell whether or not you handled the entire trip or whether it was just a portion of those two, I mentioned.

A I believe we handled the entire trip.

Q Now, did you ever hear of Wheaton Travel Agency in Chicago, Illinois?

A I have heard of the name, yes.

Q Do you know whether or not they handled any portion of that trip?

A Not really. Only from those papers.

Q Do you have either with you or available in your office the records from that trip?

A I believe you have them.

THE COURT: Do you want him to step down and

look at them with you for a minute, Mr. Druker?

MR. DRUKER: I tell you what. I have so many here, maybe I can --

Q Mr. Theodore, there is a lot of documents. Would you take a look at them and see anything in there that refreshes your recollection as to whether you handled part or all of that trip?

(Handing to witness.)

THE COURT: May I say something private to Mr. Druker -- well, tell him.

THE WITNESS: It will take me some time to look through this. In my own recollection, this trip is very cloudy. Before I was very actively involved in the group and the business.

MR. DRUKER: Your Honor, Mr. Cahn and I have arrived at a medial stipulation that Mr. Theodore's group handled a portion of that trip, but the portion that they handled did not relate to any of the hotel rooms stayed in by Mr. Cahn in Honolulu; is that correct?

MR. CAHN: That's correct.

MR. DRUKER: That was handled elsewhere.

MR. CAHN: No. Not that was handled elsewhere.

THE COURT: Just that Mr. Theodore did not

handle it.

MR. DRUKER: That Mr. Theodore did not have anything to do with the booking or payment of your hotel room in Honolulu.

MR. CAHN: That's correct, sir.

MR. DRUKER: Fair enough.

Q By the way, do you know any individual by the name of Nicholas Papademas?

A No.

Q To the best of your knowledge, did APS ever handle any travel for him?

A To the best of my knowledge, the name means nothing to me.

MR. DRUKER: Thank you, Mr. Theodore.

THECOURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Theodore, when was the first time that we met?

A Approximately five years ago.

Q Where?

A I am not sure. On Long Island. Your office, my office, I am not sure.

Q May I suggest that the first time was at the

Churchill Hotel in London.

A It's possible.

Q And isn't it a fact, Mr. Theodore, that you had absolutely nothing to do with the arrangement of the London, Brussels and Paris trip?

A Well, I was involved in the arrangement within our office.

Q And this was a trip for the National District Attorney's Association; was it not?

A That's correct.

Q And as such, there were meetings with Mr. Patrick Healy, the executive director?

A Yes, there were.

Q Now, may I ask you again, sir, how long before that London trip was arranged did you become a part of the ATS organization?

A About a year prior.

Q And isn't it a fact that all of the arrangements for the trip between ATS and Mr. Healy, and between ATS and the defendant, William Cahn, was with Mr. Tolkin.

THE COURT: Mr. who?

MR. CAHN: Tolkin, T-O-L-K-I-N.

A In terms of meeting with you and Mr. Healy, that would be true.

Q And it was in the beginning, in London when you took over the arrangements and took care of the complaints and everything else that took place on that trip.

A Partially true. It was involved for many months prior to that in our office then.

Q What I am driving at is a matter with Mr. Healy and the defendant, William Cahn --

A That could be correct, yes.

Q You don't know what specific arrangements were made between Mr. Healy and Mr. Tolkin or between Mr. Cahn and Tolkin; do you, of your own knowledge?

A Only through Mr. Tolkin.

Q Now, what did you say was the price of the single trip?

A Per the worksheet, it was -- I don't have it in front of me -- $1100, $1200 a week for two weeks.

Q For a single?

A I can't tell you specifics without seeing something in front of me. It is five years.

Q Did you bring anything with you or did you give anything to the United States Attorney which would indicate what the price, the single unit price for the trip was?

A For two weeks?

Q Yes.

(Handing to witness.)

A We provided them with this worksheet.

Q Pardon me?

A We provided them with this worksheet.

Q Yes. But what was the single price, the single unit price?

A From memory, Mr. Cahn, I can't tell you.

THE COURT: See if you can find it on there.

THE WITNESS: From these sheets, from payment from other people, single occupancy, away for two weeks, it appears it was in the area of eight, nine hundred dollars.

Q May I suggest the amount of $895?

A That could be possible.

Q Not $1100?

A (No response.)

Q Now, you say that the sheet marked Government Exhibit 62 in evidence reflects that William Cahn paid $395?

A Yes.

The trip was not to be complimentary; was it?

It might have been.

Q Well, you have a deposit there; do you not?

A We have a deposit.

Q And you have payments, as a matter of fact, two deposits?

A $50 and $345.

Q That doesn't indicate complimentary; does it?

A That in itself, no.

Q And there is a figure, $895?

A Yes.

Q What does that read?

A $1,240 less $395.

Q $1,240 less $395, leaving a balance of what?

A It is a Xeroxed copy and it is blurred. It shows a balance of $895.

Q A balance of $895 due and owing ATS; is that not correct?

A Yes.

Q Now, how did ATS treat that?

A It wasn't paid. We took it as it says here "loss."

Q You took it as a loss.

MR. DRUKER: That is what he said.

MR. CAHN: I heard him, Mr. Druker.

THE COURT: Go ahead.

Q And that was for tax purposes, was it?

A We just weren't paid.

Q ATS took it as a loss?

A Yes.

Q Do you know whether -- I will withdraw that.

THECOURT: If you want to use that, the jury can get it back after lunch.

(Whereupon Mr. Cahn took the document from the jury.)

Q Now, this invoice for $1,050, did you send that out?

(Handing to witness.)

A Not me, specifically, personally, but someone in my office did send it out.

Q Were you specifically asked for it?

A Myself?

Q Yes.

A No.

Q Do you know if there was any conversation between Mr. Tolkin and the defendant, William Cahn, in reference to a bill?

A This bill?

Q Yes.

A Yes. I believe that this was asked for.

Q I didn't ask you what you believed. Were you

present at any conversation with Mr. Tolkin and Mr. Cahn, Mr. Theodore, about that bill?

A I was not present.

Q And were you present when Mr. Tolkin received $600 and some-odd dollars in cash for payments for that bill?

MR. DRUKER: Again, your Honor, if Mr. Cahn shouts at the witness, I would ask him to return to the lecturn.

MR. CAHN: I am sorry.

THE COURT: That question isn't based on anything in evidence at the present time.

MR. CAHN: I am asking the defendant a question which I will connect.

MR. DRUKER: The witness.

MR. CAHN: The witness. I am sorry.

THECOURT: Well, ask him whether or not he knows of anything being paid or not.

THE WITNESS: I know of no payment beyond the $395.

Q Mr. Tolkin didn't tell you of any payment other than the $395?

A There wasn't any other payment.

Q Mr. Tolkin didn't tell you of any payment?

A If you want to state it like that, but Mr. Tolkin told me there was no other payment.

Q He told you that?

A (No response.)

Q Now, Mr. Theodore, if a travel agency sends a bill to a customer that is not correct or makes deductions not authorized, does not that place the license in jeopardy?

A I think you have to expand upon the question. It is too vague.

MR. DRUKER: I am going to object to it on the additional ground that it doesn't relate to anything that is in evidence in this case.

THE COURT: It may relate to some of the defendant's argument. I will permit it.

MR. CAHN: Thank you, sir.

Q If a travel agency takes deductions or makes deductions from a travel ticket that is not authorized, doesn't this place their license to operate as a travel agency in jeopardy by some Federal authority?

A You are not supposed to give rebates. This says "land arrangements," and other things of that nature.

Q I am talking about airline tickets and air fares.

A Yes.

Q Were you offered any kind of immunity by the United States ATtorney for your testimony in this particular case?

A No, sir. This issue never came up before.

Q Now, Mr. Theodore, isn't it true?

A If you excuse me, this says, "Single and luggage handling at various" -- it says nothing about airline arrangements, and I believe there was suites involved. This may have nothing to do with airline arrangements.

Q You are talking about this particular bill now?

A Yes.

Q It lists all those things?

A Um-hmm.

Q At that request of the defendant?

A So I have been told.

Q And there were arrangements made by the ATS Travel Agency for meetings with law enforcement agencies in London, Brussels, Paris, Amsterdam?

A That is right.

Q Drug enforcement units?

A That is correct.

Q Members of Parliament?

A That's correct.

Q There were visits to the jails around England?

A Yes.

Q And there was quite a busy schedule during the entire two weeks?

A Most certainly.

Q And lecturing mostly on a daily basis?

A Yes.

Q Now, let's see if we can on the Honolulu trip, isn't it a fact, Mr. Theodore, that ATS handled the entire package for a group of people from New York, but did not include the hotel payment in Hawaii? The hotel payment at the Surf Rider Hotel, but the entire other arrangements, travel and the second week of the trip was handled by ATS?

A Really, on that particular trip I was with the company about one or two months, and I really don't feel that I can give a confident answer one way or another on that particular trip.

Q Then you really don't know?

A On Hawaii, no.

Q And this $895 is still listed as an open account on your books?

A I don't think so. I don't think we are carrying it. This is 1971 and that was closed a long time ago.

(continued next page)

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Q And again, you were not present at any conversation with Mr. Druker in reference to the payment of that bill one way or another?

MR. DRUKER: Objection both to the form and to the name.

THE COURT: Mr. Tolkin, you mean.

Q (continuing) With Mr. Cahn?

THE COURT: You were not present at any conversation that Mr. Tolkin had with Mr. Cahn about the bill; is that right?

THE WITNESS: No, I was not.

MR. CAHN: Thank you.

THE COURT: Any redirect?

MR. CAHN: Just one moment. Thank you.

REDIRECT EXAMINATION BY

MR. DRUKER:

Q Just briefly, sir, that the record is accurate, Mr. Theodore, you weren't given any outright grant of immunity; were you?

A No.

Q But you were told something else, were you not, with regard to this entire matter; do you recall that?

A Something else. I was told lots and lots.

Q That you were told that so long as your testimony

was truthful to all the material put to you that nothing you said would be used against you in any future proceding?

A I believe something like that might have been said. I am telling the truth.

MR. DRUKER: That was my next question. Thank you, sir.

THE COURT: All right, you are excused. You are now excused for the noon recess. The jury can go out to lunch. Don't talk about the case among yourselves or with anyone else, and above all don't talk to folks in the court room. Be back at two o'clock and we will resume.

(Whereupon the jury left the court room at one o'clock.)

FILED
U.S. ATTY'S OFFICE
DISTRICT COURT E.D. N.Y
MAY 21 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

WILLIAM CAHN,
Defendant.

No. 75 CR 645

United States Courthouse
Brooklyn, New York

May 5, 1976
10:00 O'clock A.M.

B e f o r e :

HON. ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript of my stenographic notes in this proceeding.

Perry Auerbach
Official Court Reporter
U. S. District Court

PERRY AUERBACH
Acting Official Court Reporter

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APPEARANCES:

DAVID G. TRAGER, ESQ.,
United States Attorney
for Eastern District of New York

BY: JAMES DRUKER, ESQ.,
THOMAS SCLAFANI, ESQ., and
PETER GOLDMAN, ESQ.,
Assistant US Attorney

WILLIAM CAHN, ESQ.,
Appearing pro se

NEIL CAHN, ESQ., and
HAROLD BOGIN, ESQ.,
Attorneys for Defendant

17 THE COURT: Be seated, please. Are you ready with the next witness, Mr. Druker?

MR. DRUKER: Yes, your Honor.

THE COURT: Very good. Bring in the jury.

(Whereupon, the jury entered the courtroom at 2:05 p.m.)

THE COURT: All here? Good.

Mr. Druker, call your next witness, please.

MR. DRUKER: The Government calls Mario Iwanaga.

M A R I O I W A N A G O , called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name.

THE WITNESS: Mario Iwanaga, I-w-a-n-a-g-a.

THE COURT: You may be seated, Mr. Iwanaga.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Iwanaga, would you tell the Grand Jury --

THE COURT: Wait a minute. This is a trial jury.

MR. DRUKER: I am sorry.

Q Would you tell the jury the place and nature of your present employment, sir?

A I am with the Sheraton Hotel in Hawaii, working

in the Accounting Department as a billing coordinator.

Q And is that in particular the Sheraton Surfrider Hotel in Hawaii or is it more than one hotel that you work for?

A The five hotels in the Island, we work.

Q For how long have you worked there, sir?

A 42 years.

Q Mr. Iwanaga, do you recall a convention back around March of 1971 of an Association known as the National District Attorney's Association?

A Yes.

Q And have you ever seen the defendant William Cahn, seated to my right?

A No.

Q Have we ever met before today?

A No.

Q Now, do you have with you, sir, certain original room records of the Sheraton Surfrider, relating to that convention?

A Yes, I do.

Q More specifically, relating to Mr. Cahn, William Cahn?

A Yes.

Q And also to Nicholas Papadenus?

A Yes, I have.

Q Now, you have certain other records there, also, and are those business records of the hotel?

A Yes, it is.

Q Kept and maintained in the ordinary and usual course of business?

A Yes.

Q What are those documents, the long white sheets there?

A The white sheets are what we call night clerk's record. It gives the status of the booking the night before so we know who got complimentary room, what the average rate was. It's proof of management is what it is.

Q Now, do these night clerk's reports relate to the period of time of that convention that I just mentioned, March 13th to March 20th, 1971?

A Yes.

Q By the way, who is the agency, if you are able to tell, who booked the trip?

A That was the Wheaton Travel Agency.

Q Out of Chicago, Illinois?

A Yes.

Q And are you able to determine from those records what room Mr. William Cahn stayed in during the

convention?

A Mr. William Cahn was assigned Room 1496, which is a suite.

Q And what was the daily rate on that room ordinarily?

A In '71, it was $85 per day.

Q And was Mr. Cahn charged $85 a day during his stay?

A No, sir.

Q What was the rate that he was charged?

A He was given a complimentary room.

Q And by, "Complimentary," you mean that it was without charge?

A Without charge.

Q Now, do you have records there from Mr. Papedenus?

A Yes, I have.

Q Are you able to tell from those records in which room Mr. Papedenus stayed, if any?

A Yes. He was given Room 1484 and 1486.

Q Was that room complimentary or that suite complimentary?

A No. This was charged $30 a day double for the two rooms.

Q So it would be $60 a day per day per room?

A $60 per day.

Q And was this subsequently paid for by anybody?

A This bill here was directed to the Wheaton Travel, and Wheaton Travel paid the hotel.

Q What about Mr. Cahn's room? Was that ever paid for?

A No, sir. There was no charges other than $1 in phone calls. There was no other charges.

Q Now, when an individual who stayed in a complimentary room checks out, is it customary to give him a copy of the room bill?

A It he asks for it, we will.

Q Are you able to determine from examining Mr. Cahn's bills whether or not any copies of his room bill was given to anybody or whether you still have them?

A No. Our records indicate that Mr. Cahn did not check out with the cashier.

Q How about Mr. Papedenus?

A Our records show that Mr. Papedenus checked out with one of our cashiers on March the 20th at 8:52 a.m., 1971.

Q Are all of the copies of his bill still attached or any of them missing?

A His bills -- this is the carbon copy of the

bill. The original went to Wheaton Travel.

Q Now, --

THE COURT: If you are going to have a little interruption, maybe you can give Exhibit 63 to the jury. I think it may have been Alternate No. 1.

MR. DRUKER: Your Honor, I am going to show these documents and another document to Mr. Cahn.

THE COURT: Very good.

MR. DRUKER: May I just have one second, your Honor. Your Honor, I am going to offer these into evidence.

MR. CAHN: Your Honor, may we have a side bar?

THE COURT: Yes.

(Whereupon, a side bar was held as follows:)

MR. CAHN: Mr. Druker first conceded that this marker was out because neither one of us put it there.

THE COURT: Yes.

MR. CAHN: Second, this is not or this is not a photocopy of this. This is the bill that I submitted to the County and I concede that, but if he is saying this is a photocopy.

MR. DRUKER: No, I am not saying this is necessarily a photocopy of this. I am just saying just what you

said. This is the bill that went into the County, and ask the jury to infer from comparison of the original room bills that you submitted, somebody else's bill to the County by marking out the top.

MR. CAHN: That is the point. That is the very vital point in this, your Honor. That whether or not this came from, this is obviously a photostatic copy. Where this bill came from may be this way instead of this way.

MR. DRUKER: I submit that this was a photocopy of the bill.

THE COURT: The jury can determine that. This will be marked in evidence.

MR. CAHN: Your Honor, if I may --

MR. DRUKER: Mr. Cahn would hardly submit a copy of a bill with someone else's name.

MR. CAHN: If I can show you other bills with no name on it.

MR. DRUKER: I have plenty of other bills with no name on it.

MR. CAHN: The point is this, that in law there cannot be built an inference on an inference.

THE COURT: That may have been when my father was admitted to the bar. It isn't now. The

Court of Appeals in the Second Circuit has correctly contradicted that.

MR. CAHN: In other words, it is the intention of the Court to permit the jury to infer that because this bill has a name on it, that the tear-away of this sheet had a name on it.

THE COURT: Well, I think the jury can infer although they don't have to, but since the items on the yellow carbon copy are the same as the --

MR. BOGIN: We concede that, your Honor. The point which I may offer is the inference of the photocopy without a name, is that the defendant deleted the name, and that cannot be a proper inference if the fact of a photocopy of this bill which the offer in evidence is not, and your Honor can well see that the name, Sheraton Hotel appeared here.

MR. GOLDMAN: That is a document to keep in the house.

MR. DRUKER: In any event, is there any objection if I cross that out.

MR. N. CAHN: What is this here (indicating)? You mean he got this bill before it was paid?

MR. DRUKER: I will ask him.

THE COURT: Mark it for identification first.

(Whereupon, the side bar was concluded.)

THE CLERK: Two sets of documents, marked Government's Exhibit 64 and 64A for identification.)

Q Mr. Iwanaga, showing you now Government's 64 for identification, about the third or fourth page down and showing you a document out of Government's Exhibit 64A for identification, and I will ask you to take a look at those two documents; the one on your left being a photocopy of something, and the one on the right being an original, I take it or a carbon. Now, you will notice that the document on your left does note in the lower right-hand quadrant has some additional matter which is not on the document on your right, the A Exhibit; right? (Handing to witness.)

A Right.

Q And also that there is a notation in the numerical entry in the lower right-hand quadrant, the A Document, does not appear on the other. Can you tell us from examining those two documents whether or not the one on your left is a photocopy of anything that was on your right?

A This exhibit on the left is not a copy of the exhibit on the right here. The reason you have this Sheraton

Hotel and Motor Inn on this copy here is because this is the original billing, which is NCR paper.

THE COURT: What kind of paper?

THE WITNESS: No carbon required.

Q That is a photocopy of the original billing?

A Yes. This is a photocopy of the original white copy of the hotel bill.

Q Which was sent to whom, if you know?

A Wheaton Travel.

Q And referring again to the original white copy, was that one attached to the exhibit that is on your right now?

A Again, I didn't get it.

Q The original that was sent to Wheaton Travel, was that one -- that was a part of a group on your right now?

A Yes.

Q That was torn off and sent to Wheaton Travel?

A Yes.

(Continued on next page)

DIRECT EXAMINATION

BY MR. DRUKER CONTINUING:

Q And the document that is on your left, the photocopy, does that pertain to the same room and for the same period of time and for the same occupants as the documents on your right?

A Right.

MR. DRUKER: I am going to offer both 64 and 64A into evidence, your Honor.

THE COURT: Where did 64 come from?

MR. DRUKER: 64 would be a County claim, and 64A are the documents from the hotel.

THE COURT: All right. Well, I ruled at the side bar I would receive them. It doesn't determine what happened with respect to inferences from them in cross-examination. Let them be marked.

THE CLERK: So marked in evidence.

MR. DRUKER: Thank you, sir. Just a moment.

THE COURT: No. There may be other questions. Mr. Cahn, who is representing himself as defendant may cross-examine. You may cross-examine him, Mr. Cahn.

CROSS-EXAMINATION

BY MR. CAHN:

Q Mr. Iwanaga, how long did you say you were working for this hotel?

A 42 years.

Q Temporary job, I take it?

A No.

Q Mr. Iwanaga, People's Exhibit 64A in evidence shows a red mark, $436.80 in red?

A Right.

Q Could you explain to the Court and jury, if you will please, what does that mean? (Indicating to witness.)

A This means that this item was transferred to what we called City Ledger. It's a receivable. This account balanced up to the time it's transferred out from the front office to the back office. It's still what we call front office receivable. Once it is transferred up from the front office and gets to the back office, this is what we call transfers the item to City Ledger. It gets out of the balance.

Q Now, from these records, could you tell when this bill was paid?

A I cannot. We do not have the records, but I can tell you from this bill in here that the bill went to

Wheaton Travel on April the 2nd, 1972.

Q April when?

A April 2nd, 1971. That is the date that the bill went to Wheaton Travel.

Q And so the bill was paid after that?

A This is the date this account, the checkout, the last posting on it is on March the 19th. On the 23rd it was transferred to City Ledger and on April the 2nd, it was billed out to Wheaton Travel. I will know the same date on the Papedenus account.

Q And so this hotel bill was not prepaid?

A No.

Q And you testified on direct examination, sir, that the records indicate -- either those records or these -- that Mr. Papedenus checked out when (handing to witness)?

A He checked out on the 20th.

Q March 20th?

A March the 20th, 8:52 O'clock a.m., 1971.

Q And when did Mr. Cahn check out?

A This record indicates that Mr. Cahn did not check out with the cashier, but on May the 20th, the cashier cleared out the account.

Q Now, Mr. Iwanaga, were you at the desk at the time Mr. Papedenus checked out?

A No, I wasn't.

Q And when someone checks out of the hotel, do they say, "I am John Jones, I am checking out"?

A Normally they would. They would say, "I am John Jones. I am checking out from Room so and so."

Q From room what?

A And the room.

Q And the room?

A Yes.

Q And may I suggest to that it's the records -- that the records of the hotel are kept by room numbers?

A The files are in room numbers, yes.

Q Not by name?

A Room number and name.

Q But when a person checks out, for the purpose of execution, the room number is needed; is it not?

A It is needed.

Q And that is the basis of getting the records; the room number?

A Right.

Q And would you tell us again what Mr. Papedenus' room number was?

A His room number was 1484 and 1486.

Q 1484 and 1486?

A Right.

Q And Mr. Cahn's room number?

A Was 1496.

Q And on Mr. Cahn's bill there is nothing on the front page; is there?

A No. There isn't anything.

Q Nothing at all?

A Right.

Q No entry for any room or tax or anything?

A Yes, sir. Because it's marked "complimentary."

Q No room?

A No charges.

Q And on the second page?

A This is what we refer to as a first account. The first account, the first is to post the room and the tax if any. The second account is so you can charge a meal or telephones or whatever it is; laundry. Whatever it is.

Q And that is to be charged to the individual even if the room is complimentary; isn't that so?

A Right.

Q And the amount of the telephone calls or personal charges, perhaps if an individual bought something at one of the shops in the hotel and charged them to the hotel?

A That would be on the personal account.

Q That would be on the personal account, and even if that particular individual didn't check out, that bill would be sent to him; would it not?

A Normally it would be sent, yes.

Q Normally?

A But in this case here, there is only a balance of $1, and the Sheraton policy, anything over a dollar or under we do not bother to send a bill to the guest.

Q Now, I ask you again, you have no idea who checked out at the time that you mentioned to this Court and jury who actually checked out of Mr. Papedenus' room?

A No, I do not.

Q It could have been me?

A Possibly.

Q You don't have the original of this zerox in People's 64 in evidence?

A I do not have it, because this is the -- on the lower right-hand corner it shows Sheraton Hotel and Motor Inns. This is the original copy which went to Wheaton Travel. The second copy, which is the guest copy, does not have anything like that on it.

Q So, I repeat again, just to make sure, that this still, which is submitted in Government's 64, which is

purported to be and is a claim to Nassau County by Mr. William Cahn is not a zerox or photostatic copy of People's Exhibit 64A in evidence, which purports to be a bill for Mr. Papedenus?

A This bill ere?

Q This bill?

A This bill here -- wait, let me rephrase this?

Q Yes.

A The copy of the bill here with the Sheraton Hotels and Motor Inn is not a copy of this in here, because you cannot take a clear copy of a bill like this from this copy. You can never take a zeroxed copy. Not in a million years.

MR. CAHN: Thank you very much.

THE COURT: Is there any redirect?

MR. DRUKER: No, sir.

THE COURT: Thank you, Mr. Iwanaga. You are excused.

MR. CAHN: May I have the Court's indulgence for just a moment.

THE COURT: Just a moment, please. I am not sure whether you marked everything in evidence that we talked about.

MR. DRUKER: These exhibits were, your Honor; 64 and 64A.

33a Iwanaga

MR. CAHN: Thank you.

THE COURT: All right. You are excused.

(Whereupon, the witness was excused.)

I N D E X

WITNESS	DIRECT	CROSS	RED.	RECR.
Luis Karrasqualo	3	9	16	
Mario Iwanaga	17	28		

GOVERNMENT'S EXHIBIT #	DESCRIPTION	FOR ID.	IN EV.
17C	Business records	4	8
64 and 64A	Documents	25	27

3 MR. DRUKER: The Government calls Mr. Luis Karrasqualo.

L U I S K A R R A S Q U A L O , called as a witness, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name, please.

THE WITNESS: My name is Luis Karrasqualo, I work in the Americana Hotel --

THE COURT: Spell your last name, please.

THE WITNESS: K-a-r-r-a-s-q-u-a-l-o.

THE COURT: You may be seated.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Karrasqualo, you are presently employed by whom?

A The Americana Hotel.

Q Of San Juan, Puerto Rico?

A That is right.

Q In what capacity?

A I am the front desk manager.

Q For how long have you been with the Americana?

A Americana?

Q Yes.

A Ten years.

Q Now, Mr. Karrasqualo, do you know the defendant, William Cahn, who is seated over there to my right?

A No, I don't.

Q Have you ever had any members of the National District Attorney's Association stay at the Americana in San Juan?

A Yes.

Q Or had any conventions with the National District Attorney's Association?

A Yes, we did.

Q On more than one occasion?

A We had a convention, more than one occasion. On the policy we had here, Mr. Cahn was there for two or three occasions.

Q Now, was one of these occasions back around May 5th, 1972?

A Yes.

Q I am going --

MR. DRUKER: May these be marked for identification as 17C.

THE CLERK: So marked.

Q I am going to show you Government's 17C for identification and I will ask if you recognize those as business records of the Americana in San Juan? (Handing to

witness.)

A Yes, they are.

Q And whether or not those records refresh your recollection as to whether or not Mr. Cahn stayed at the Americana in May of 1972?

A Yes.

Q Do you know what room he stayed in?

A Well, according to this, he stayed in 1222 and 24, 1,222, that is a uite.

Q And are you able to determine from that document what the daily rate was on the room in which he stayed?

A There was no -- this is a rate here that the room was complimentary for, but our files, we always put the room rate on the bill.

Q And the room was complimentary?

A Yes.

Q Is there any question about that?

A Well, the room was complimentary, and here on the bill it was rerated, "write off." The hotel took care of it.

Q Did Mr. Cahn or anyone else, to your knowledge, ever pay for the room?

A No.

Q And along with that, do you have any sort of

records of the daily complimentary listings for the various rooms in the hotel?

A What do you mean?

Q Do you have either a night clerk's report or any records which list all of the rooms which were complimentary on a given day?

A Yes.

Q I will ask you to take a look at all the records and indicate to you where Mr. Cahn's room was complimentary (indicating).

A Yes. Right here. And on the list, on the arriva' list it shows up, too, that the room was complimentary.

Q Was there any other individual with Mr. Cahn on that trip, to your knowledge?

A Well, the whole convention was there.

Q This is in May now we are talking about?

A Right.

Q Is there a Mr. Joseph Spinnato and a Mr. Robert Roberto?

A I have the billings here for Spinnato, Cahn, Mr. Maston -- Mrs. Maston that was complimentary too. Maston, M-a-s-t-o-n.

Q Was Mrs. Maston's bill complimentary?

A It was complimentary, too.

Q Was Mr. Spinnato's room complimentary?

A Yes.

Q Was Mr. Roberto's room complimentary?

A Roberto?

Q Yes. Do you have any record there for a Mr. Robert Roberto?

A It was, too, yes. I have it here.

Q Thank you.

MR. DRUKER: Your Honor, after showing these to Mr. Cahn, I intend to offer Government's 17C into evidence.

Q With regard to Mrs. Maston --

THE COURT: What about the offer?

MR. DRUKER. I am holding it for a moment, your Honor.

Q You have testified that she had a complimentary room. Was that for this trip or a different trip, sir? I am referring now only to the May 3rd to fifth trip, 1972?

A I have Maston here from month 8/9; from the ninth, 8/9 to 8/20.

Q That is a separate trip in August?

A Yes.

Q With regard to this May 3rd to May 5th trip, was this document entitled, Arrival List -- this list be

complimentary to this?

A Yes.

Q The correspondence that's attached, is that correspondence from the Americana San Juan to Mr. Cahn?

A Yes, it is.

MR. DRUKER: I am going to offer this into evidence.

THE CLERK: Government's 17C marked in evidence.

Q By the way, on the other occasions on which Mr. Cahn was in San Juan, was one of those the August 9th trip that you mentioned just now?

MR. CAHN: I will concede that.

Q Do you know whether or not his room was complimentary on that occasion?

MR. CAHN: Concede that too.

Q And do you have any records from any other occasions?

A No. The only records I have here, the two occasions which one was November 15th to the 19th, and one was from May 3rd to May 7th.

Q And whether or not his rooms are complimentary on those occasions?

A They were complimentary, both of the times.

MR. DRUKER: I have no further questions.

CROSS-EXAMINATION

BY MR. CAHN:

MR. CAHN: Mr. Druker, I have the exhibits here, if that is what you are looking for, sir.

Q Mr. Karrasqualo, could you tell us, please, from these records, if you know, what time of the morning -- what time there was a check out and what date?

A Well, we don't have the time on the check out -- on the register card. We do have the time that you check in.

Q But you don't know?

A No. Actually we do have a check out time of 1:00 o'clock on the hotel. This is a procedure, but when people like VIP people come, we let them stay in the hotel. Anytime they check out they can have no problem with us.

Q If there was a check out at 6:00 o'clock in the morning, can you tell from that?

A No.

Q You could not?

A No.

Q Now, could you tell, sir, whether or not there was an actual check out?

A On this bill, yes. This bill was signed.

Q Signed by who?

A Well, the signature say like W. Cahn or something.

Q William Cahn. All right. Now, when the bill was signed, what happens? What does the cashier do?

A When the bill -- well, when a bill is signed, let's say this was signed, because it would have an okay. It was complimentary. It goes back to the accounting department.

Q Yes. But if it was complimentary, does the individual get a copy of the bill?

A Well, if you ask us for it we will give you one.

Q And if a bill is complimentary, does it usually contain the room charge?

A Yes.

Q It does?

A Yes. In some occasions -- right now the Hotel Americana is not doing it this way. At this time when it happened, we used to put the room and tax on the bill.

Q At that time?

A At that time, yes. Then we would check out -- what we do is if you are going to pay for the meals or whatever the instructions we have, then we'll just let you sign like it was signed here.

Q Now, when a bill is signed and if it's complimentary, is it not the policy or was it not the policy

or was it not the policy of the Americana Hotel at that particular time to finalize the bill on that day?

A Well, you have to bill. See, we can day by day. Everyday, if you charge anything on a day, basically day by day basis, when you check out the bill is ready anytime you want the bill.

Q Anytime?

A Right.

Q And if there is a signature to the bill, isn't that true, sir, that at the end of that day the bill is in complete final form?

A Yes.

Q I ask you if that is true on People's Exhibit -- I will withdraw any previous questions. Sir, is it not true that Mr. Cahn checked out on May 6th?

A Right.

Q And signed the bill on that day?

A Um-hm, yes.

Q And is it not true that the bill was not finalized till May 8th?

A Well, actually when he signed the bill, this goes to the accounting department.

Q Yes.

A And after accounting department, they rebate it.

In other words, write off.

Q And isn't that done on the very same day, sir?

A No, it is not. Because one you sign it, it goes out of the front desk and goes to accounting. It could stay there for two, three or five days and then they write it off.

Q You are quite sure of that?

A Yes.

Q Mr. Karrasqualo, what is your name, sir?

A Karrasqualo, sir.

Q Do you know Mr. Chago Munoz?

A Si, Senor. Yes, I do.

Q And he was the manager -- one of the managers of the convention?

A He was the sale manager at that time.

Q And do you, of your own knowledge, know of a particular problem which came about as a result of that bill?

A No. Not to my knowledge.

Q You do not?

A Not to my knowledge.

(Continued on next page)

] Q Now, when a copy -- when an individual guest checks out, isn't a part of the bill torn off from the group of papers and handed to the individual?

A Well, the bill, itself, comes out with three copies, like I say, when a complimentary -- when a person wants a copy , we got, most of the people don't take a copy. If you ask for a copy we will give him a copy.

Q If the bill is going to be mailed to the individual who checks out, then there is a signature on the bill; is there not?

A Acutally all the bills, complimentary, whether the person is going to sign it to collect, they also have to be signed.

Q I understand.

A Unless the person pays cash. Then he doesn't have to pay the -- sign the bill.

Q A person who pays cash doesn't have to sign a bill?

A No.

Q If a bill is not complimentary and is going to be sent to the individual guest at his office or his home, he signs the bill of the hotel?

A Right.

Q And he is given one of the copies that are

attached together?

A Right.

Q It's torn off?

A Right. It's not -- well, like I say, it comes with three copies.

Q But they are attached together?

A Right. They are attached together.

Q They are not separate sheets?

A No.

Q They are attached and they are torn off?

A Yes.

Q Now, do you have with you, sir, the records of -- oh, by the way, who was Mr. Gerald Solomon, Gerry Solomon?

A He was the general manager at that time.

Q Now, as I understand it, is Mr. Munoz now one of the managers at the Holiday Inn?

A I don't know.

Q Is Mr. Solomon the general manager of the El San Juan?

A Yes.

Q Do you have these copies of the bills that were for Mr. Roberto and Detective Magee.

A No. I don't have any. No.

Q You don't have them?

A No. Actually, you know, this is old, and we had to go to the basement and locate all these records. Naturally we didn't have all of the records right off. We just found what we got. That is what we have.

Q I understand that. But you do not have these records marked in -- for William Cahn, the same records for Mr. Roberto or Detective Magee?

A I don't have them with me. If they were staying in the hotel, we have them. We can get them for you if you want them.

Q And were you the cashier on the day I checked out?

A Well, this is so many years ago, I cannot tell you if I was a cashier or not at that time.

MR. CAHN: May we approach the side bar, your Honor, for just a moment.

THE COURT: Yes.

(Whereupon, a side bar was held as follows:)

MR. CAHN: May I ask the indulgence of the Court in that I didn't know, your Honor's ruling until today, and I didn't know Mr. Druker was going to have these witnesses available today. I would like to impose upon this witness to remain until

tomorrow, because I do have certain correspondence that I would like to show, which perhaps might refresh his recollection.

THE COURT: All right. We will keep him.

MR. DRUKER: No objections. We will tell him after he leaves the stand.

(Whereupon, the side bar was concluded.)

MR. CAHN: Thank you. I have no more.

THE COURT: Is there any redirect.

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Did Mr. William Cahn ever pay for any of his rooms at the Americana of San Juan?

A To the best of my knowledge, no.

Q To the best of your knowledge, did anyone else ever pay for William Cahn's rooms at the El San Juan Americana?

A To my knowledge, no.

THE COURT: All right. You can step down.

(Whereupon, the witness was excused.)

MR. DRUKER: The Government calls Mr. Robert Fertitta.

R O B E R T F E R T I T T A , called as a witness, having been first duly sworn by a Clerk of the Court, was examined and testified as follows:

THE CLERK: State your name please, sir.

THE WITNESS: Robert Fertitta.

MR. DRUKER: May I just have one moment, your Honor?

THE COURT: Very good.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Fertitta, would you tell the jury the place and nature of your present employment?

A I work for the National College of District Attorneys at the University of Houston, Houston, Texas. I am the Associate Dean and financial officer of the college.

Q For how long have you been with the National College?

A Approximately five years.

Q And you are an attorney, I take it?

A Yes.

Q Prior to that, where were you employed?

A Employed as an Assistant State Attorney in

Baltimore, Maryland.

Q What is the National College of District Attorneys, and what are its purposes and functions and goals?

A Well, it's a private educational institution, chartered on the laws of the State of Texas, and we are primarily engaged in providing postgraduate training and education to prosecuting attorneys across the United States.

Q And are you funded in part or in whole by the Law Enforcement Administration or the LEAA grants?

A Yes.

Q Is that in part or in whole?

A In part.

Q What part, roughly?

A Approximately 75 per cent LEAA funds.

Q Now, do you know the Defendant William Cahn?

A Yes, I do.

Q Seated to my right. For how long have you known him, roughly?

A Probably since about 1968.

Q And at any time was he affiliated with the NDAA attorneys?

A He was a member of our Board of Regents.

Q For how long?

A Until, I think, December of '74.

Q And from when?

A From the founding of the national college in 1970.

Q And as a member of the Board of Regents, did he travel from time to time on national college business?

A Yes, he did.

Q Did he attend seminars?

A Yes.

Q Regents meetings?

A Yes.

Q Panel meetings?

A I beg your pardon?

Q Were there any panel meetings of any kind?

A Curriculum meetings.

Q Did he give lectures from time to time?

A Yes.

Q Were any of these pursuant to LEAA funded projects?

A Yes.

Q And with regard to the LEAA funded projects for which Mr. Cahn traveled, was the nature of the funding ever discussed at Regents meetings at which Mr. Cahn was present, to your knowledge?

A Yes.

Q And were minutes taken of these meetings?

A Yes.

Q Were copies of the minutes sent to Mr. Cahn?

A They were sent to all the Regents.

Q Were any notices of any kind sent to Mr. Cahn and the Regents with reference to the LEAA funding?

A Well, as a member of the Regents, he was on our mailing list, and he would have received all announcements of the courses and brochures announcing the courses.

MR. DRUKER: Mr. Cahn, do you have 1A in evidence, by any chance?

MR. CAHN: Yes, I have it. I am sorry.

MR. DRUKER: That's all right.

(Whereupon, the document was handed to Mr. Druker.)

Q Now, Mr. Fertitta, you have before you now Government's Exhibit 1A and 2A for identification, I believe (handing)

A Yes.

Q Do you recognize those as being business records of the National College kept and maintained in the ordinary and usual course of its business?

A Yes, I do.

Q And 1A, by the way, is for identification, and 2A is in evidence.

Now, what do those records relate to, just generally?

A They are claims for reimbursement for expenses.

Q For trips undertaken by William Cahn?

A Yes.

Q Would you tell the jury?

A One is, the other relates to Joseph Spinnato.

Q That would be 2A?

A That's right.

Q And was it actually the same trip?

A Very close. There is a one-day difference, but the same general trip.

Q Where was that to? And when was it?

A It was to Chicago between November 10th and 13th of 1974.

Q And are you able to determine or do you recall independently the nature of the National College business?

A The College held an Organized Crime seminar in Chicago on those dates. These both relate to that.

Q Did Mr. Cahn and Mr. Spinnato perform any functions for the College on those trips?

A Yes. They were both lecturers.

Q And do you know whether or not Mr. Cahn -- withdrawn.

Were either or both of those lectures pursuant to LEAA grants?

A Both of them.

Q And were checks issued pursuant to those claims?

A Yes.

Q And mailed out in the ordinary and usual course of business?

A Yes.

MR. DRUKER: I will offer 1-A in evidence at this time.

THE COURT: Is there any objection to marking it?

MR. CAHN: No, sir.

THE COURT: Go ahead and do it, please, Mr. Druker.

THE CLERK: Government's Exhibit 1A marked in evidence.

Q And do you know whether or not Mr. Cahn had knowledge of the LEAA as being a source of the funding for that project?

A For this seminar in Chicago?

Q Yes, sir.

A Yes.

When we received the grant from LEAA for this

series of seminars there was a notice in the Regents bulletin.

Q Do you have any of those that were mailed out?

A Yes. And this is a particular one relating to this particular Chicago seminar.

Q And do you have any board meeting minutes which would reflect discussions of the LEAA nature of funding with regard to that project?

A Yes. I have a portion of the minutes from the board meeting held on July 11, 1973, in Houston.

Q Do you know whether or not this was in the ordinary course of business sent out to Mr. Cahn?

A Yes. In fact, there is an attached memo, a transmittal memo with it.

MR. DRUKER: Your Honor, I will offer the board minutes and the bulletin, after showing to Mr. Cahn, as Government's 1-C in evidence.

(Whereupon, the documents were shown to Mr. Cahn.)

MR. CAHN: No objection.

THE CLERK: So marked Government's Exhibit 1-C in evidence.

Q Now, Mr. Fertitta, I will show you another group of documents, 28-A through 39-A for identification, and Government's 41-A for identification, and I will ask you to take a look at those documents and tell the jury whether or not

those also are business records of the National College kept and maintained as such (handing to witness)?

A Yes, they are.

Q And what are they, generally speaking?

A Again, they are claims for reimbursement, for expenses. Most of them are letters, then tall, and then copies of documentation that was provided to us at the time. And then copies of our checks.

Q Which was issued pursuant to the letters or claims?

A That's correct.

Q And do these relate to travel by Mr. Cahn and possibly Mr. Spinnato with regard to National College business?

A Yes.

Q And is any of that, to your knowledge, LEAA funded?

A Well, I can answer your question, yes, there are. I don't know whether each does.

Q Some were and some weren't. All right.

Now, do you play any role in the setting of the financial and fiscal policies of the National College?

A Yes.

Q What role is that?

A I am the financial officer of the college.

Q And other than yourself, is there anybody else determined in the --

A The Dean.

Q Are you also governed with regard to the spending of LEAA funds by any guidelines or regulations by that organization?

A We are bound by any regulations promulgated by LEAA or for that matter, the State of Texas.

Q Are you aware of any policies of the College, yes or no, which would either prevent or allow an individual to be paid for his travel expenses while traveling pursuant to College business, and also to be paid by his home jurisdiction or by some other outside entity for those outside expenses?

A I am aware of the policy, yes.

Q Written or oral policy?

A It's written now.

Q Well, in 197[illegible] through 19 -- the end of 1974, was it written or oral?

A I think during that period it was oral.

Q What was that policy?

A Well, generally the policy was that if an individual to whom we would ordinarily pay expenses was

receiving monies for those expenses from another source, we wouldn't pay.

Q Do you have any policy at all with regard to maximizing or minimizing the expenses of the college?

A That was the basis of the policy.

We are a private, very small private institution, and we have limited funds, and we attempt to conserve our funds every opportunity, and that's the reason for the policy.

Q Did Mr. Cahn ever ask your permission to seek reimbursement for his travel expenses while telling you that for the same trip for which he was seeking reimbursement, one or even two entities were paying his same travel expenses or some of his same expenses?

A Did he ever ask me that?

Q Yes, sir.

A No.

Q Did he ever tell you that he was doing this?

A No.

Q In the years 1970 to '74?

A No. Never told me.

Q And with regard to the policies of the College, would they have allowed or prevented this?

A Prevented our paying him, knowing that he was receiving funds from another source?

Q Yes, sir.

A We would not have paid.

Q Were there any LEAA guidelines or policies that prevented or allowed you to pay, under the circumstances, with regard to the initial LEAA-funded project?

A Not specifically, no.

Q Would you tell the jury whether or not you applied the College's policies with regard to the LEAA trips?

A We did apply LEAA policies.

Q Across the board to all trips?

A Yes. We are required to do that.

Q And with regard, to your knowledge, and of the existing LEAA policies and guidelines at that time, do you know whether or not the policies would have allowed or prohibited Mr. Cahn from collecting due reimbursement for his travel expenses with regard to Exhibit 1-A and 2-A in evidence?

A This was a 19 -- no, I'm sorry. The difficulty is that I have to answer no, I am not aware of any that LEAA regulations were such during this entire period of time as far as the school was concerned, the college. We would have to ask for a specific opinion, LEAA on that type of matter. Our policies at the college covered it, but we never had an occasion to ask LEAA.

Q Now, did the grant or grants under which the National College was operating from the LEAA have defined purposes or goals?

A Yes, they did.

Q And would it be included or excluded in those goals, the payment of expenses of a District Attorney traveling on behalf of the National College, and I should say, expenses of his local entity? Would that be included in the purposes and goals of the grant, to your knowledge?

For example, his local county needed ten new police cars. Would your grant be able to cover that?

A No.

Q Would your grant, under any circumstances that you can conceive, cover payments to an informant of a local District Attorney?

A No. All of these grants were training grants that were provided narrowly for the training of prosecuting attorneys, and in some cases investigators, but nothing outside of that.

MR. DRUKER: Your Honor, I will offer these documents into evidence.

THE COURT: All right. Let's take our afternoon recess now. We will take five minutes or so. The jury can go back to the jury room, and don't talk about

the case.

(Whereupon, the jury left the courtroom at 3:15 p.m.)

THE COURT: Is there any objection to these exhibits being marked?

MR. CAHN: I don't think so, but these are all the things from the top.

MR. DRUKER: Right.

MR. CAHN: No objection.

THE COURT: You will have to step down a few minutes.

(Whereupon, the witness left the stand.)

THE CLERK: Government's 28-A through 36-A marked in evidence.

MR. DRUKER: May I just --

THE COURT: I thought there is some more.

MR. DRUKER: There's 41. There should be a 41-A. 39 through 41-A.

Your Honor, can I just ask how late we will be sitting this evening?

THE COURT: We will sit a little after 4:30.

MR. DRUKER: Thank you.

(Whereupon, a short recess was taken.)

THE COURT: Are we ready for the jury?

MR. DRUKER: Yes, sir.

THE COURT: Bring them in.

(Whereupon, the jury entered the courtroom at 3:35 p.m.)

THE COURT: You may be seated.

All right, I think Mr. Druker was finished.

MR. DRUKER: I think so. I just have one more matter.

Your Honor, counsel for the Government and the defendant are stipulating, if the Court please, that the documents which have just been marked into evidence through this witness with regard to those documents, the claims or letters were made to the National College or caused to have been mailed by Mr. Cahn, and that the checks were mailed to Mr. Cahn by the National College; is that correct?

MR. CAHN: With the possible exception of one or two which we will cover on cross-examination.

THE COURT: Very good. You may cross-examine.

CROSS-EXAMINATION

BY MR. CAHN:

Q Bob, when did you begin your association with the National College?

A March of 1971.

Q March of 1971. And that was perhaps almost a year after the college was started?

A Approximately a year.

Q And you became, at that time, a fiscal officer of the college?

A No. Sometime in 1972 I was made financial officer.

Q Now, you talked of a fiscal policy of the college; the National College of District Attorneys.

A I don't think I used the word "fiscal" but a policy, yes.

Q And did I understand you correctly to characterize it as an oral policy?

A Yes.

Q Who said it?

A My recollection was that Dean Voonhumus and I did.

Q Aren't policies set and approved by members of the Board of Regents, Bob?

A Certain policies, yes.

Q Including financial policies?

A Some financial policies.

Q Your salary?

A Certainly that.

Q Your expenses?

A Yes.

Q The expenses of the Board of Regents?

A They approve the budget.

Q They're the ones. Do you know of any member of the Board of Regents, Bob, that knew of this so-called "oral policy" to which you refer, of the College?

A One way or the other, whether they were aware of it or not.

Q You are an attorney.

A Yes.

Q And I don't mean to be facetious, but do you know the value of an oral policy that is not communicated to anybody?

A It was communicated to those people we thought it applied to.

Q And who are they?

A If anyone made a claim to us indicating that they were receiving money from other sources, we didn't pay them, and that way they learned our policy.

Q Did you make your policy known to any member of the Board of Regents?

A Not to my recollection, no.

Q And is it your opinion that your policy was

binding without approval of the Board of Regents?

A Yes.

Q Is that your opinion?

A Yes. I wouldn't have paid -- I wouldn't have signed the check.

Q You wouldn't have signed the check?

A In other words, I followed the policy.

Q You followed the policy because that was your policy.

A Basically, yes.

Q And if the Board of Regents challenged that policy, may I ask, could you have paid it?

A If the Board of Regents had decided that they didn't like the policy, they could have changed it, yes.

Q And would they have the opportunity to like it or dislike it unless they knew about it?

A That would be more difficult if they didn't know about it.

Q And I ask you again, did you advise me of that policy?

A Not to my recollection, no.

Q Mr. Randall?

A No.

Q Mr. Price?

A No.

Q And Mr. Price was the President of the College; was he not?

A President and Chairman of the Board.

Q You didn't expect it to be a secret?

A It wasn't a secret.

Q Well, how many members of the Board of Regents were there?

A I think ten.

(continued next page)

Q Did you let Mr. Vance know?

A Did I tell Mr. Vance? No, I didn't tell Mr. Vance.

Q And they were the representatives -- or Mr. Healy?

A Mr. Healy was just an ex officio.

Q Was he advised of this oral policy?

A I don't think so.

Q And they represented the four members of the Board of Regents from the National District Attorney's Association?

A That's correct.

Q Now, there were two members, were there not, from the National -- from the American Bar Association.

A Two members, yes.

Q Who were they?

A At that time -- well, Louis Nichols and Frank Coco.

Q Louis Nichols and Frank Coco?

A For the American Bar Association.

Q From the Criminal Law Section?

A Yes.

Q Did you tell them of that policy?

A I don't recall telling them, no.

Q And we also had as a member of the Board of Regents, I forget what organization he represented, Mr. Leon Jaworski.

A He is still a member.

Q Did you tell him about this oral policy?

A No. I believe I have only spoken to Mr. Jaworski on two occasions.

Q Mr. Raul --

A Magonna.

Q He represented the National Association of Trial Attorneys.

A International Academy.

Q Did you tell him?

A Never met Mr. Magonna.

Q Now, how many of the Board of Regents did we account for?

A I think that's it. Oh, Dean Knight of --

Q He was from the Bates College of Law, University of Houston?

A Yes.

Q And did you tell him?

A I don't believe so.

Q And you were, in fact, an employee of the Board of Regents; were you not?

A In every sense of the word, yes.

Q So am I not mistaken, Bob, when I say that there was no oral policy. There may have been a policy of Bob Fertitta. Wouldn't that be more accurate?

A In the sense of I made policy dealing with financial matters, yes.

Q Now, where else did the funding for the college come?

A Other than LEAA, from various private sources.

Q Such as?

A Oh, the Moody Foundation of Galveston, Texas, the M.D. Anderson, of Houston; the Houston endowment of Houston; the J. Edgar Hoover Foundation. At that time that's primarily the sources.

Q And while there were monies expended for -- I'll withdraw that.

While there were LEAA funds expended for various functions of the National College of District Attorneys, there were within the covers of the National Colege, private monies?

A That's correct.

Q And in your opinion, would you say that this was in violation of these LEAA regulations?

A To possess private money?

Q Yes. No, not to possess, to use LEAA funds when there were other funds available.

A No. Because the law requires a ten per cent match of LEAA money with private money. So it's not only not a violation, it's a requirement.

Q And how as that ten per cent match made up? In cash?

A How was it spent?

Q No. No. Am I not correct that matching funds for LEAA funds could be made up in different ways other than the hard cash?

A At one time that was true.

Q Well, we are now going back to 1970, Bob.

A It was called in-kind match.

Q In-kind match. And that in-kind match, Bob, was made up by the presence, for instance, of District Attorneys, and you took parts, a specific portion of their salaries and said, "Yes, federal government, this is what we are spending so much time from the District Attorney who is making" -- as in my case $45,000 a year, "And we are matching your fund with part of his salary"; is that not correct?

A That's certainly possible to have done that.

Q Well, weren't some of your forms that you had

asking for the total annual salary of the individual which was involved with your work -- didn't some of your forms require asking for that information?

A Perhaps. But I really don't remember.

Q Well, let me show you Government's Exhibit 39A in evidence and ask you if item No. 5 doesn't call for a total annual salary (handing)?

A Yes. This blank here (indicating).

Q Yes. We will come to --

By the way, in order to properly observe and follow LEAA regulations, did there not have to be specific vouchers supporting the claims; and certain certifications?

A That is true. LEAA had certain documentary requirements, but so did the State of Texas. But, the individual grantee could always have its own.

Q The individual grantee would what?

A Require its own requirement for adoption.

Q May I suggest they cannot be antagonistic to the LEAA?

A That's true.

Q You mentioned on a couple of occasions, the State of Texas.

A Yes.

Q Were they involved in this LEAA grant?

A Yes.

Q How did that --

A Well, in a number of -- how did that happen? In a number of grants, the money would flow from Washington to Boston, to the State of Texas, and then the college would be a sub-grantee to the State of Texas. We were bound by their financial policies.

Q Could you tell the Court and jury why the grant then didn't come directly to the college?

A The only reason I am aware of was in the early days of LEAA, grants went to Government agencies, and we were not a Government agency.

Q And you weren't permitted to receive Government grants?

A Because we were not a Government agency, that's right.

Q Isn't that somewhat what I call washing LEAA funds --

A I wouldn't characterize it that way at all, Mr. Cahn.

Q You wouldn't?

A No.

Q Were you supposed to, under LEAA regulations, Bob, were you supposed to get a grant from LEAA as the

National College of District Attorneys?

A We were not a Government agency, and therefore we couldn't.

Q You weren't permitted to?

A Another way of putting it.

Q Is it an incorrect way of putting it?

A Misleading, I think. But the reason was that the LEAA, the original structure of LEAA established fifty state planning agencies in the various states. Much of these agencies were held in financial responsibility to the LEAA. All the money had to flow through them. We were, in effect, receiving our monies from the state planning agency of Texas.

Q And you were and are a member of the National District Attorney's Association?

A I am.

Q And they were receiving certain grants -- by the way, that was an Illinois, not-for-profit corporation; is it not?

A To the best of my knowledge, yes.

Q And didn't they receive grants through the State of Minnesota?

A I am aware of at least two grants.

Q And then again, may I ask you, wasn't that washing and laundering LEAA funds?

MR. DRUKER: Object at this point.

THE COURT: The witness answered once. Let him answer again. I think I told the jury, if I haven't, things you decide on are the answers that come from the witnesses.

MR. DRUKER: More than that. I submit that the question itself has no relevance, your Honor. Two wrongs wouldn't make a right.

THE COURT: We have had NDAA, and I am not going to pass on the weight to be given at this time.

Do you want to repeat the question, Mr. Cahn?

THE WITNESS: It is not necessary. The answer is no. I wouldn't characterize it as that.

Q Now, in these claims which were shown to you by Mr. Druker, Government's Exhibit 2A in evidence, 1A, 2A, 28A, 29A, 30A, 31-A, 32-A, 33-A, 34-A, 35-A, 36-A, 37-A, 38-A, 39-A and 41-A, some of them have forms and others are just related to letters?

A That's correct.

Q Was the College permitted to by LEAA regulations to pay the claims on the basis of letters alone?

A Yes. As long as there was some form of documentation. These forms were ours.

Q The forms that are associated with the various

government exhibits were prepared by the National College; were they not?

A That's correct.

Q And they were constantly changing; were they not?

A They changed periodically.

Q And may I suggest that the changing was due to the numerous and changing that took place with LEAA regulations?

A That would be one of the reasons that they changed.

Q And they were pretty consistent; were they not?

A Well, as new interpretations came out, we learned a little more then of what was going on.

Q New interpretations, and then you learn more of what was going on.

A Yes, sir.

Q That was pretty difficult.

A Well, the LEAA was a pretty new federal agency.

Q Then I understand that --

A We were in Houston, and they were in Washington. It took us time to find out.

Q In Government's Exhibit 1A, there is a change that was made, $100 to $135.

A Yes.

Q Who made that change?

A Looks like the handwriting of our bookkeeper.

Q It wasn't --

A Her initials are here.

Q Her initials are there?

A Yes.

Q "DH"?

A Dorothy Housedorf.

Q And in November of 1974 --

You wouldn't have accepted or you wouldn't have made payment for a claim unless the voucher was submitted; isn't that correct?

A Not necessarily. That was the preferred way to submit a claim for reimbursement.

Q Now, I am going to show you People's Exhibit 39-A, and ask you if you recognize any of the initials (handing to witness)?

A I recognize Dorothy Housedorf's, and I recognize mine.

Q Your initials and Dorothy's?

A Housedorf.

Q So this, would you not say, is a photostatic copy of a claim which was submitted to you; is that right?

A Xeroxed copy, yes.

Q A Xeroxed copy?

A Yes.

Q Do you notice anything peculiar about that claim, Bob?

A Peculiar? I assume you mean it's not signed.

Q That's exactly what I mean.

A But I don't consider that peculiar.

Q You don't consider that peculiar?

A Unusual, unusual.

Q And you made a claim --

By the way, who made this claim out?

A According to this, you did.

Q Where?

A Your name is here (indicating).

THE COURT: On the top line.

THE WITNESS: On the top.

Q I understand. Do you know who did the typing?

A No.

Q May I suggest that the form which says "I hereby certify," is therefore meaningless, because nobody certified, and there is no date on the form itself. Nobody made a certification.

THE COURT: Just a minute. You are suggesting

something, and if you want an answer, it's a proper way to do it. Let the witness answer.

A You stated that the certification would be meaningless because it was unsigned. I would agree with you.

Q And would you say that since there is no other documentation in reference, unless I am mistaken --

A I am just looking. No other documentation.

Q No other documentation insofar as that particular claim is concerned. You were in or somebody was technically in violation of LEAA regulations by making payment.

A Possibly, technically in violation.

Q And in violation of your oral policy.

A Well, ora policy merely was that the oral policy didn't relate to certain cases. If we knew there was another source available, we wouldn't pay. To that extent it was a violation.

Q Can I suggest to you this was probably a mistake on your part?

A A mistake?

Q Or an inadvertence by not knowing that the claim wasn't signed and returning it and asking for signing.

A It wasn't a mistake.

Q Pardon?

A It wasn't a mistake. I don't remember it specifically, but I doubt if it was a mistake.

Q You believe that you saw --

Then, as I understand it, that the form which was prepared by the National College of District Attorneys was not signed, but knowing that and recognizing that you went ahead and paid the claim, anyway?

A That's correct.

Q Am I correct?

A That's correct.

Q And you called the fact that it wasn't signed unusual, but there was nothing peculiar about that?

MR. DRUKER: Objection as repetition.

THE COURT: Overruled.

A Yes.

Q Now, we talked o[illegible] -- Bob, I am going to ask you to look again at 1-A and 2-A --

MR. DRUKER: Your Honor, if I might, this being a corporation of law, if Mr. Cahn would address the witness as Mr. Feritta --

THE COURT: Well, he has been doing it through the day.

MR. CAHN: I am sorry. I will do that.

THE COURT: I haven't challenged him on it.

Q Mr. Feritta, would you please total up the amount that was sent under claim 1-A and under claim 2-A?

A You mean really total it?

Q Yes. If you will, separately.

A In my calculations they both add up to $277.73.

Q Now, what part of that was the -- what I called an honorarium, a consultant fee?

A The $135, on each of them.

Q Would you subtract that from each amount, please?

A $142.72; $142.73.

Q Now, would you total that both $142.73 and double it?

A I hope this is right; $285.46?

THE COURT: I agree.

Q Fine.

Now, Mr. Feritta, if the amount of the air fare to Houston, Texas was to Chicago, pursuant to claim 1-A and 2-A were borrowed, and totaling $285.46, and in order to obtain that loan, a specific claim had to be made in the amount of air fare. In the amount of that air fare. Do you understand?

A You are talking about an American Express card?

Q No, no, no.

If in order to make the trip to Chicago and return -- let me withdraw that.

You testified that you wouldn't pay if there was dual reimbursement of expenses; isn't that basically what you said?

A If other sources of funds were available.

Q Yes. Now, if the individual who is invited to Chicago or two individuals who were invited to Chicago borrowed money to get to and from Chicago, submitted a bill to the National College of District Attorneys for the air fare, and when it was received, when the check from the college was received, that amount was returned to the party making the loan, would you consider that reimbursement?

MR. DRUKER: Your Honor --

THE COURT: Would you consider it dual reimbursement?

Q Would you --

MR. DRUKER: I object to this as being, No. 1, misleading, and No. 2, not based on any evidence in this case.

THE COURT: It's a little different, but I will let the witness answer it.

A It sounds like an ordinary credit card

arrangement to me. You borrow money through a credit card, as your question is, is that dual reimbursement?

Q Yes.

A No.

Q Now, if the money were advanced by the County and then under those very circumstances, the County was returned the money, would that be dual reimbursement?

A Advance for the air fare, reimbursement by the College, and then repayment to the County for the advance?

Q Yes.

A No. That wouldn't be dual reimbursement.

Q And would it be the concern or the business of the college what arrangement for that payment of advances was?

A No.

Q Keeping in mind your calculations, I show you Defendant's Exhibit A in evidence and ask you to read it to yourself (handing to witness).

A I have read it.

Q Would you conclude that that involves the payment of the air fare to Chicago and return; on People's Exhibit 1-A and 2-A?

A Except?

Q Less.

A Except for the difference in the dates, yes.

There is a different date. This says November 13th. This says November 12th. Other than that, yes. I would have to assume so.

MR. CAHN: May I ask the Court's indulgence?

THE COURT: Yes.

Let me ask one question in the meantime.

Mr. Feritta, was one of the reasons why funds to the National College originally had to come through the state so the state could keep control of the LEAA fund as distinguished from Washington's influence?

THE WITNESS: Absolutely.

MR. CAHN: I didn't hear your Honor's question. I am sorry.

THE COURT: Read it, Mr. Reporter.

(Question read)

THE WITNESS: And I answered, "Absolutely."

Q When did you become associated with the college?

A March, 1971.

Q March, 1971. In Government's Exhibit 29, in response to a letter requesting -- stating that I had sent a bill for expenses to the college, I received a letter dated July 16, 1971, and part of the exhibit which states "Although one, although the LEAA grant has been approved,

the check has not been received. We anticipate receipt of the check very soon. We have been asked not to pay any of the College's expenses from the private funds because of the fact that LEAA funds cannot be used to replace private funds expended prior to receipt of the LEAA check."

(Handing to witness)

A Maybe I didn't hear. I don't know what your question was, Mr. Cahn.

Q Does that not indicate, Mr. Feritta, that private funds were available for speakers and for members of the Curriculum Committee, Board of Regents, and that the College, itself, wanted to wait until the funds from the LEAA came to use that to pay off the debts of the college?

A Well, first of all, this letter is written by the Secretary to the Dean. Frankly, I am not aware. I have seen this letter before, but I am not aware of why she stated what they did in that paragraph. But I do recall this period of time was a changeover. Up until this time, we had only one small LEAA grant of about $16,000. From 1970 through the time we received the big award from LEAA, we were using private funds exclusively, except for the $16,000.

Q From when?

A From whenever the College was founded. In

1970, when it became an entity, through the time we received the first award, major grant in 1971. Maybe that's what she is referring to. I really don't know.

Q Mr. Feritta, wasn't there a conversation and a discussion with you and some of the members of the Board of Regents about the necessity of submitting vouchers for some of their expenses, including me calling it [illegible]aning to the office, and it was agreed that wherever possible, private funds would be used so that the individual District Attorney who was giving of his time to the Board of Regents would not have to be subjected to that.

A I remember some of the things, but I don't remember any specific conversation. I remember some of the things that you have just mentioned. You asked me about that unsigned form before, I guess.

Q Would you answer my question with this one?

A I am attempting to, Mr. Cahn. We had another oral policy, if you will, and that was when it came to certain individuals such as the Board of Regents who would not otherwise compensate for their time in coming to a Board of Regents meeting, that we would -- we didn't want them to lose money in coming to Houston for one of our meetings. Again, it was not in writing, but if, for example, the LEAA guidelines did not permit us to pay what that individual had

expended, we would use private funds to make up the difference. If that's what you mean, that's my recollection. I don't know if that started in the conversation or how that was developed, but I do remember we had that policy.

Q That is part of the minutes?

A The minutes, I don't know. I don't know. The minutes of the Board of Regents meeting?

Q Yes.

A I don't recall. I don't recall whether it was ever mentioned at a board meeting.

Q But you do recall a conversation similar to that one I suggested to you?

A I remember not a conversation.

Q A discussion?

A Well, I remember hearing someone or some group, whatever, about having it being demeaning to have it documented. I don't remember the conversation. The words I remember.

Q If I suggested that it was District Attorney Randall, from St. Paul, Minnesota, would that refresh your recollection?

A No, I am sorry.

Q Now, you started to tell us something about 37, the unsigned document.

A The same kind of thing. The members of the Board of Regents in some cases, Mr. Cahn, received special treatment from the College.

Q And that was on the basis of oral policy?

A Yes.

Q Whose?

A I would like to think of it as the College's.

Q What you would like to think of it as, Mr. Feritta, may be just that, but who formulated that oral policy?

A In regard to the Regents --

Q Yes.

A Dean Voonhumus and myself.

Q Was that related to a Board of Regents --

A Only on an individual basis, when they received a --

Q For example, was I ever told of that policy?

A I don't remember telling anyone of that policy, Mr. Cahn. We just about did it.

Q Then there wasn't any individual basis, Mr. Feritta.

A Individual basis, if for example, one time per diem was $25. If an individual submitted a claim in excess of $25, and we paid it, the Regents must have known

that we were paying beyond the per diem allowance.

Q And that was in violation or in contradiction with your alleged other oral policy of minimizing the expense of the National College; was it not?

A To some extent it was, yes.

Q This per diem of $25, may I ask you about that? What was that?

A The per diem?

Q Yes.

A The per diem of $25 was the amount of money per day on hour -- figuring out how many hours in a day that we, by LEAA guidelines were permitted to pay an individual for subsistence and lodging out of the LEAA grant.

Q And was that an automatic amount?

A Automatic amount?

Q Yes.

A Well, it was the amount set by LEAA.

Q Yes. And that included hotel, meals?

A Yes.

Q And what I am specifically asking, did that have to be substantiated by a voucher?

A Not food. The lodging normally had to be, but not the food.

Q And if the lodging submitted was $50 a day by

an ordinary member of the college, how would that be worked out?

A If a Regent?

Q No. If an ordinary speaker.

A An ordinary speaker we wouldn't pay it.

Q No. Well, what would you pay?

A We paid up to the maximum amount permitted under the $25.

Q And if you did not have a hotel voucher, was it $12.50, $12.50 or $15.00 for food, $10.00 for lodging or $15.00 for lodging?

A Ordinarily we knew what the rates were independent of a voucher, because we normally made arrangements at the hotel so we knew what the rates were. If we didn't, we would equal what the hotel bill paid, what was claimed or what we knew to be the cost up t4 $25.00.

Q And it was your understanding that the only thing that had to be vouched for on that $25 a day per diem was the hotel bill. That was not automatically involved?

A You mean automatically just paid $25?

Q Paid $25 a day.

A We didn'd do that. You could, under LEAA regulations, do it either way, pay a $25 flat per diem or itemization. We took the itemization route.

Q Under LEAA guidelines, you could pay $25 a day whether you ate with your grandmother and slept with your brother?

A Under LEAA, you had to have a policy of paying a flat per diem or asking for itemization of full expenses.

Q So if it was the policy to pay $25 a day, it was paid no matter what was expended nor where; is that correct?

A That's pretty close, yes. We didn't do that, however.

MR. CAHN: Thank you. I have no further questions.

THE COURT: Any redirect?

MR. DRUKER: Yes, sir.

THE COURT: Go ahead.

(continued next page)

REDIRECT EXAMINATION

BY MR. DRUKER:

Q Do you have 29 in front of you?

A Yes.

Q Mr. Fertitta, Mr. Cahn asked you something about somebody claiming -- about submitting receipts being demeaning to a public official. I will ask you to take a look at the correspondence contained in 29 in Evidence and see if that refreshes your recollection as to the source of the complaint about receipts and documents being demeaning?

A Yes, it does.

Q Who was the source of that?

A Mr. Cahn.

Q And is that a letter that you have in front of you?

A Yes, it is.

Q I will ask if you will read the letter to the jury.

A "Dated July 12, 1971, to George A. Van Hoomissen.

"Dear George:

"Some time ago I sent you a bill for expenses while at the College. I thought I would have received the check by now. In today's mail, however, I received some further instructions, a request for a

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resume and a form for payment. I don't know whether you want me to fill that out for my forthcoming appearance at the college or for my appearance in June. Please let me know as soon as possible because the bill for my tickets is still outstanding and I would like to clear that up.

"I also notice that in your form letter that you intend to house faculty members at Moody Hall and also notice the requirement for itemization, cash receipts, etc. George, I think all this is rather demeaning for a public official. I don't have to do that in my own County and I don't think it necessary for me to start now especially under these circumstances. I feel that a statement of expenses on the part of the visiting faculty member is certainly all that should be required. If necessary, I will take this up with the Board of Regents. In any event, please let me know about my prior bill.

It was good seeing you in Hyannis Port and I look forward to seeing you in August. Kindest personal regards.

"Sincerely, William Cahn, District Attorney."

(Continued on next page.)

Q Do you know of any other regions complaining this was demeaning to a public official?

A No, I dont.

Q By the way, that was part of the documentation relating to a trip by Mr. Cahn; was it not?

A Yes.

Q And did Mr. Cahn state anywhere in that letter or anywhere else either orally or in writing, to your knowledge, that his documentation had already been submitted to the comptroller of Nassau County pursuant to a claim for his payment for his travel expenses?

A No.

Q Did he raise that question at the Board of Trustees, pursuant to his letter, the question of documentation being demeaning. Did he subsequently raise it?

A I don't recall his raising it.

Q Did you ever bring up the question of dual reimbursement at a Board of Regents meeting and ask whether or not it was permissible or allowable?

A Again, I don't recall him ever doing that.

Q Has the policy you mentioned ever come to the attention of the Board of Regents?

A I don't think that it ever did. To my recollection, no.

Q Was it reduced to writing at any time?

A Yes.

Q In the form of a claim form?

MR. CAHN: As to when? May I ask when?

THE COURT: Just a minute. First it was --

THE WITNESS: Yes. It has been reduced to writing.

Q When was this done?

A I believe sometime in 1974, but I don't know precisely.

Q And is this in the form of a by-law or a claim form?

A It was included initially in just a typed mimeographed or Xeroxed form that we used for reimbursement purposes, and again, when we went to a printed form, it was again incorporated into that.

Q And did the Board of Regents say anything to the effect: "Hey, what is this? Are you trying to prevent us from getting dual reimbursement?"

A No one ever mentioned it.

Q Did you ever have instances when individuals would come to you and tell you that other entities were paying for some of or all of their travel expenses?

A Yes.

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Q On several or many occasions?

A Oh, I would say numerous occasions.

Q How about speakers on some occasions?

A Yes.

Q Ever any regents, if you recall?

A I don't really remember any regents, but I know speakers.

Q Were they telling you what they were intending to do or asking you what they should do when the problems came up?

A Usually they would lay their dilemma or problem in front of me and ask how they can honor this. Normally, situations where they were traveling on the road and lecturing for two individual organizations at the same time; for example, fly from New York to Houston to lecture for us, and then fly to Albuquerque and lecture to another organization. They would explain to us that we can prorate the costs of that between the two organizations. It's rather normal.

Q Did Mr. Cahn ever explain any of these to you or to anyone else at the college?

A Not that I know of.

Q Now, going back for a moment to Government's Exhibit 39 in Evidence, that being the unsigned claim --

A Yes.

Q Do you have specific recollection of receiving that?

A No. No.

Q Do you recall making any conscious decisions regarding the allowability or non-allowability of that claim without the signature on it?

A I don't recall making decisions, but my initial is here approving it after the bookkeeper had looked at it, from an allowability standpoint. I don't independently remember making a decision. I know what my decision would have been, and what it would be now.

Q At the time when that claim was submitted, did you trust Mr. Cahn?

A It's a claim for reimbursement. I knew Mr. Cahn had gone to San Francisco to lecture for us at an Organized Crime Seminar. Part of the bookkeeper's responsibility is to verify the amounts. When I would see her initials, I knew that she would have verified the air fare. The taxi fare is not out of line. The per diem is a straight per diem. Again, we knew how much the hotel accommodations were, and a consultant's fee was a standard $100 under that grant.

Knowing all those things, the better practice would

have been to send it back to have him sign it, but I wouldn't pay him because I knew it was correct.

Q Now, Mr. Cahn put you a hypothetical before about he or somebody else borrowing money and then being reimbursed by his colleges, for the National College, and then use that money to put back into the County account, and you didn't see any dual reimbursement there; did you?

A No.

Q And he specifically used air fare in his example. I will give you a different hypothetical. An individual traveling or travels on behalf of the National College of District Attorneys, and possibly on behalf of his county. His county pays his air fare to the travel agent, pays for the air fare in full. He comes home and he submits a claim to the National College of District Attorneys for his air fare, and a check is sent to him. Do you see dual reimbursement there?

A No. If I understood you, it was merely -- you lost me. I was trying to compare your hypothetical to the one Mr. Cahn gave.

Q Don't compare it. In my hypothetical --

A The county has paid the travel agency for the ticket.

Q Yes.

A Mr. Cahn has not sent a claim?

Q Yes.

A In that case we wouldn't pay that.

Q And one more to the hypothetical: The County has paid for the air fare. Mr. Cahn, or the individual, I should say, submits a bill to the National College for the same air fare and he submits a bill to the National District Attorney's Association or the National Center for Prosecution Management, also for portions of the same air fare. Do you see any dual reimbursement or triple reimbursement or any problems in that hypothetical?

A If the whole doesn't add up to, you know, greater than the amount actually paid, I don't see any problem with that. You mentioned portions of the air fare. That's not unusual to prorate the cost, but if the total amounts reimbursed is more than the actual expense, then that would fall within our policy of rather of somebody else using their money, under the circumstances.

Q In other words, if the sum of the parts is greater than the total?

A Something like that.

Q And again, back in the days when the State of Texas was receiving the grant from the LEAA, was giving them to the various entities, such as the National College, would

it be fair to describe them as an administering agency?

A Monitoring and administering, yes.

MR. DRUKER: I have no further questions.

RECROSS EXAMINATION

BY MR. CAHN:

Q Mr. Fertitta, I will ask you about Mr. Cahn's dilemma. If Mr. Cahn had no dilemma he would have no reason to talk about any dilemma?

A That's correct.

Q If Mr. Cahn believed to be proper and normal with all laws and legal recognitions, he would have no reasons to --

MR. DRUKER: Object.

THE COURT: We are getting a little ahead of the case. It's an argumentative question, and I permitted the first one.

MR. CAHN: I am talking about Mr. Fertitta's LEAA --

THE COURT: Your first question is all right. The second one,I am sustaining an objection.

Q Now, Mr. Fertitta, taking Mr. Druker's hypothetical to you, that if the County paid the air fare to the agency, to the travel agency, and the college sent the air fare plus expenses to Mr. Cahn, and Mr. Cahn returned

the air fare and the expenses to the County, would that be dual reimbursement?

A No, I don't think so.

Q And again, would there be any concern of the College or Mr. Fertitta as to what method was used in order to repay the air fare and the expenses to the County?

A No.

Q You couldn't care less?

A As long as I didn't live in the County, I assume, no, I wouldn't.

MR. CAHN: That's all. Thank you.

THE COURT: All right. You are excused. Thank you, Mr. Fertitta.

(Whereupon, the witness was excused.)

THE COURT: I will give you a two-minute dividend tonight.

MR. DRUKER: Can we just have a possible three-minute recess. I might have a short but important witness.

THE COURT: That you can't have tomorrow morning that easily?

MR. DRUKER: I don't think so. It may not be possible.

THE COURT: All right. I am an indian-giver.

I take it back. Go to the jury room for a couple of minutes and I will get you back here.

Don't talk about the case.

(Whereupon, the jury left the courtroom at 4:30 p.m.)

(Whereupon, a five-minute recess was taken.)

(Whereupon, the jury entered the courtroom at 4:35 p.m.)

(Whereupon, Mr. Ira Theodore resumed the witness stand.)

* * *

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : CR-645

WILLIAM CAHN,

Defendant. :

----------x

FILED
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U.S. DISTRICT COURT E.D.N.Y.
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TIME A.M.
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United States Courthouse
Brooklyn, New York

May 5, 1976
~~10:00~~ o'clock A.M.
4:30

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I certify that the foregoing is a correct stenographic transcript of the proceedings had in this matter.

Official Court Reporter
U. S. District Court

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
-and-
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

(4:35 p.m.)

(Whereupon, the jury entered the courtroom.)

(Whereupon, Mr. Theodore resumes the stand.)

THE COURT: All right. We can go ahead.

Mr. Theodore, you don't have to be sworn again. You are still under oath.

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Theodore, did Mr. Cahn, the defendant William Cahn, come to you sometime in the winter of 1974 or 1975 about the London trip?

A Yes, he did.

Q And where did he come to you?

A He asked to see us in our office on Long Island.

Q And who is "us"?

A Arnold Tolkin and myself. Arnold Tolkin, being President of the travel agency.

Q Is this something which you have now told me for the first time

A Yes.

Q Was anyone else present besides Mr. Tolkin, Mr. Cahn and yourself?

A No.

Q And I will ask you to relate the conversation that took place, tell me what Mr. Cahn said, as best you can

and what you and Mr. Tolkin said.

A Mr. William Cahn?

Q The defendant; is that correct?

A He came in to see us regarding the London trip which took place years before that. He spoke to us about personal problems he was facing after losing the election and the impending investigation that this trial is all about. He was quite concerned about the London trip, and he asked us to back him up concerning payment of that trip, of that open balance. We couldn't do that. He proceeded to give us a check in the amount of $1,050 that we never cashed, which was to be payment for that trip. He said that in cleaning out his office he discovered the unpaid invoice and he wanted to settle it at this time.

Q I show you now this document and ask if that is the check that you mentioned in your testimony (handing to witness)?

A That's the check.

Q And at that time and place, did Mr. Cahn make any intention or state that he had paid ATS previously?

A He acknowledged at that time that he thought he paid it, but in, I think -- and I am paraphrasing, I am not quoting exactly, but in cleaning out his office he discovered the unpaid invoice and he felt at that time, he would like to

settle it.

Q Do you recall when this conversation took place, to your best recollection?

A I cannot give you the exact day, but I do remember distinctly it occurred on a Friday. It was during the winter months, between the period of December and March. At the time that the investigation was ongoing, and we were subpoenaed to be called before the Grand Jury.

Q And are you able to say whether or not that conversation took place on the date that is on that check?

A I am not certain. I believe it took place after the date of this check, but it would be very, very difficult, impossible for me to fix the exact date.

I do remember the reason that was involved, because I remember Mr. Cahn coming in a black overcoat and black hat, and I remember it was the winter months.

Q Now, you testified just now that Mr. Cahn wanted -- I think you were paraphrasing -- that Mr. Cahn wanted you to back him on the London trip. Can you elaborate on that, as best you can?

A In the course of the conversation he spoke about the long relationship we have had together, and the fact that he was now in trouble. He lost the election, and that for whatever reasons, the new District Attorney, the Federal

Government was out to get him and to put him in jail. And he spoke a little bit about that London trip and payment, and he did not directly ask us, but indirectly, he indirectly implied and established a story that way back, he did give us cash to pay for the open balance on the trip, and we responded that it would be impossible for us to do that. It wasn't true. It was nowhere on the records of our company. Everything was subpoenaed. It just couldn't be. For moral reasons and other reasons.

In addition to that, at that point we went into about cleaning out his desk and finding the unpaid invoice, and he proceeded to give this check to us, which we didn't want to accept, but he insisted that we hold onto it. We really didn't want it at that time. Not knowing what to do, we called Mr. Goldman who was our corporate attorney, and we decided no way were we going to cash this check, and we really forgot about it to this point. It was not volunteered or brought up before, in that the Government didn't ask me about this, and I feel very uncomfortable being here, being in a position of relating things of this nature about Mr. Cahn, who I know -- I know his family for five years.

Q But it happened, didn't it, Mr. Theodore?

A Yes.

THE COURT: Mr. Goldman who you called is not the

Peter Goldman who is here?

THE WITNESS: No. It is Mr. Robert Goldman of our law firm.

MR. DRUKER: No further questions.

THE COURT: Mr. Druker, I think this was more than three minutes, and I don't know whether Mr. Cahn is prepared to cross-examine this.

MR. CAHN: Oh, yes, sir.

CROSS-EXAMINATION

BY MR. CAHN:

Q At any conversation between Mr. Tolkin and I about the payment of that check, you lied?

A No, sir.

MR. DRUKER: Could Mr. Cahn stand at the lectern if he is going to shout at the witness?

THE WITNESS: The questions you directed at me concerned itself, was I present at any meeting between yourself, Mr. Healy and Mr. Tolkin within prior to the commencement of the trip.

Q Did I not ask you if you were present at any conversation between Mr. Tolkin and me wherein reference to the payment of that bill --

A I did not interpret the question in that vein. The question I interpreted as to whether I was present at any

meeting for arrangements for the meeting prior to the actual inception of the trip.

Q This check is dated December 13, 1974. Now, did you not tell Mr. Druker that when I came to the office, Mr. Theodore, that I claimed that the bill was paid?

A Yes, you claimed that the bill was paid. The story -- oh, oh well, you related that you always felt the bill was paid, and in cleaning out your records you came across this invoice as being unpaid, and you wanted to settle it at that time.

Q After claiming that the bill was paid?

A You said you thought it was paid, and in cleaning out your office you realized you were wrong. It was unpaid.

Q I said that to you or did I not say to you, and to Mr. Druker that as long as --

MR. DRUKER: Objection.

THE COURT: You mean Mr. Tolkin.

MR. CAHN: Pardon.

THE COURT: Do you mean Tolkin?

MR. CAHN: I am sorry.

Q (Continuing) Between you and Mr. Tolkin, that as long as your books indicate an outstanding balance, that I will give you the check pending an investigation and to please hold it?

A No. That is not what you said.

Q I didn't say that. Why did you hold the check for?

A Because we felt sorry for you. I should have given it to Mr. Druker at that time.

Q You weren't going to cash this check?

A No. If we were going to cash it, it would have been cashed long ago. We never intended to cash it. You insisted that we keep it. You just insisted.

Q Wait a minute. Did you want to give it back to me?

MR. DRUKER: Would Mr. Cahn please step back to the lectern if he is going to shout at the witness.

A Yes.

Q Why didn't you?

A At first we refused to accept it. You were quite emphatic at that time. You wanted us to keep it, and as I think about it, we did not want to pursue an argument with you at that point. We felt the best thing to do was to let it lie. Let you leave our office and let the issue dog, knowing we would never have cashed that check.

Q At that particular time when I left the office?

A You were quite --

Q No. At that particular time when I left the

office, you had decided that you were never going to cash it?

A We didn't want the check.

Q And what was your purpose in calling your attorney, Mr. Goldman?

A To tell him about the meeting that transpired, because we knew you were being investigated. We were called as Government witnesses and we did not want to in any way stand in the way of the investigation, and we felt we were in a very awkward position, since you were our client for many, many years, and yet we were on an obligation, being called or were called before the Grand Jury, and quite truthfully, we let it lie because we knew you and your family so long we just wanted to forget about it, until this morning.

Q Why didn't you send the check back?

A I don't know. We just let it lie around. Obviously we never cashed it. The check is now a stale check, anyway. To our intent, it was not to cash the check.

Q Why didn't you send the check back?

MR. DRUKER: Objection. Asked and answered.

THE COURT: Is there any other recollection as to why you didn't send it back?

THE WITNESS: We basically put it in a drawer and we forgot about it. It was not brought up at any time after that. This morning, you implied that you paid

cash to our company prior to that time. It is just not true.

Q Didn't I claim that at the time I met you at your office?

A No, you did not.

Q Didn't you tell this jury that I said, "Look, I remember paying you, but here is the check in order to clear this matter up, holding, pending investigation"?

A I believe what I said -- I believe what I said a few moments ago was that you came in our office and you apologized to us; that you thought you paid the bill, but we were right. It was unpaid, and you wanted to settle it at that point.

Prior to doing that, Mr. Cahn, you asked us to back you up; that you gave us cash a number of years before that to cover this trip.

Q And I would not question you about a check for $1,050 drawn on my account thereafter, if it wasn't cashed?

A Obviously, you didn't.

Q What do you mean, "Obviously"?

A You didn't question me.

Q I never questioned you about it?

A After this check?

Q Right.

A No. That was --

Q So I have $1,050 in my account that is just there?

MR. DRUKER: Objection.

THE WITNESS: I don't know what is going on here.

MR. DRUKER: To the part of Mr. Theodore, and it is argumentative to both.

THE COURT: It has been answered. Objection overruled.

Q You never told me you were going to cash the check?

A We didn't want to take the check from you. We asked you not to leave it, and we were in Arnold's office, and you had your coat on, and you put it back down on the desk and insisted that we hold onto it. I think about it -- or whatever, but you wanted us to keep it. You were quite argumentative at that point and we felt it best just to let you leave our office at that point.

Q And isn't it a fact, Mr. Theodore, that I said, "Hold the check, and if you find through your records that I did pay, then forget it"?

A No.

Q And thereafter there was never any conversation

about this check, whatsoever?

A By "thereafter," you mean after that meeting in our office?

Q After the meeting in your office.

A No, sir. No conversation.

Q There was never any conversation?

A Certainly not with me, and to the best of my recollection, not with Mr. Tolkin.

Q About a check for $1,050?

A Yes.

MR. CAHN: I offer it into evidence.

THE COURT: Mark it.

THE CLERK: Defendant's Exhibit D in Evidence.

MR. CAHN: May I show this to the jury, your Honor.

THE COURT: Yes. They may look at it. Are there any more questions?

MR. CAHN: Yes. Just a minute.

THE COURT: All right.

(Continued on next page.)

THE COURT: All right.

Q Now, when for the first time did you bring this to the attention of Mr. Druker?

A Late this morning, after I testified here.

Q After you testified here?

A Yes, sir.

Q That was the first time you ever brought it to the attention of Mr. Druker?

A That's correct.

Q In spite of the fact that you testified before the Grand Jury?

MR. DRUKER: Objection as argumentative.

THE COURT: Overruled.

Q In spite of the fact you were questioned on numerous occasions by representatives of the United States Attorney's office?

A This matter, this check occurred to the best of my recollection after the time we testified. I testified before the Grand Jury at the end of January 1975. To the best of my recollection, that check was backdated. It was not --

Q The conversation took place after the date of the check?

A Because you told us that in cleaning out your

office you discovered the unpaid invoice. I couldn't tell you whether that check was written in frontof me or whether it was written prior to your coming in our office, and you just put it down.

Q Was I still District Attorney?

A No. Definitely not.

Q I was not?

A It was after you lost the election.

Q Was I still District Attorney?

A I believe you were not. You ended your term of office at the end of December that year.

Q Yes.

A I believe it was not.

Q Are you sure?

A No. That I can't be sure about. To the best of my recollection, this event is over a year, close to a year and a half ago.

Q Well, you were testifying to events that happened in 1971.

MR. DRUKER: Object.

THE COURT: That is argumentative. Let's not take time out --

Q And again there was never any conversation between you, and to the best of your recollection and knowledge,

between Mr. Tolkin and of myself about that check after I left your office when you say I got there?

A That's correct.

Q Never?

A After you left our office there was no conversation.

Q And it's been a year and a half?

A Yes.

Q And you have held that check since?

MR. DRUKER: I object as to the fact it's been gone over three times.

THE COURT: All right.

Q Now, your books -- showing you People's Exhibit 62 in evidence, those are your records; are they not (handing to witness)?

A That's correct.

Q And your records indicate that I owe APS $895?

A That is what this sheet shows as our worksheets of payment that come in before, during and after the London-European meeting. The invoice that which the other invoice for $1050 or whatever, which shows -- or land arrangement also included suites in Europe.

Q They were extra charges?

A That is the only way I could account for the difference.

Q $155; was it not?

A Is that the difference?

THE COURT: Yes. Between $895 and $1050.

Q But I ask you, your records indicate that I owe -- that William Cahn owes ATS or group consultants $895.

A That is what it shows.

Q That is what it shows?

A Yes.

Q Are you telling this Court --

MR. DRUKER: Your Honor, may Mr. Cahn step back to the lectern if he's going to scream?

Q Are you telling this Court and jury when I offered to pay it you refused it?

A I am offering to tell the Court and jury that when you came in the check was $1050, and we did not want the check because it was obvious at that point to us --

THE COURT: You didn't want it?

THE WITNESS: No, we didn't want it.

THE COURT: Anything more?

MR. CAHN: Yes, sir.

THE COURT: I am not going to keep this jury beyond 5:00 o'clock. This is 30 minutes on a three minute witness.

MR. CAHN: I didn't say three minutes.

THE COURT: All right.

Q You are telling us -- withdrawn. You refused a debt of $895. You didn't tell me, Mr. Cahn, the debt is only $895?

A At that point it was questionable whether it was a debt. You went on the trip. The trip was many years before that -- please let me finish -- the trip was many years before that. At that point, when we weren't paid and the year of the trip, and shortly thereafter, we -- in terms of our company, wrote it off as a complementary arrangement to a tour organizer, which is very common in the travel industries, and it was only in December or that winter that that debt was brought up again, when it was obvious that I was being questioned about it by the Grand Jury.

Q Was it a debt as made out on your records?

A In 1974. We didn't consider it a debt when you came in with the check.

Q Was it a debt whenever this was?

A At that point, it was a debt. We wrote it off as complementary arrangement to a tour organizer.

Q I'm not concerned about what you wrote it off.

THE COURT: What is the next question?

Q Was it a debt?

A I would have to assume so, yes.

Q And you refused payment of it?

A Five years later?

Q Yes.

A Yes, we did.

THE COURT: All right. Thank you. Ladies and gentlemen, you are excused for the night. We will start at 10:00 o'clock tomorrow. Thank you for the extra time. Don't talk about the case among yourselves, at home or with anyone or the courtroom personnel. Thank you. Have a good night.

(Whereupon the jury left the courtroom at 4:55 p.m.)

THE COURT: Mr. Druker, are you still contemplating that you will finish your case tomorrow morning?

MR. DRUKER: Your Honor, I think we just have one more witness, that being a representative from one of the other organizations, and he would be similar in length to Mr. Fertitta. I will be resting after that.

THE COURT: Then you should be ready sometime around noon, Mr. Cahn.

MR. CAHN: The individual from Puerto Rico is coming back?

MR. DRUKER: He will be here, but I am not

calling him.

MR. CAHN: I understand. Well, I want him on.

MR. DRUKER: He will be here.

MR. CAHN: About noon, your Honor?

THE COURT: Yes. It looks that way.

MR. CAHN: Because I will have my first witness ready.

THE COURT: There is a problem in being a witness and an attorney.

MR. BOGIN: That is why I am here, your Honor.

THE COURT: On one of your questions you stated your salary. That is a matter of public record, so I didn't say anything about it, but that is putting testimony in the question. I suggest you be careful about it.

MR. CAHN: May I suggest, your Honor, that one of the -- I believe Mr. Druker will concede that one of the exhibits that have been offered by the People does contain my salary.

THE COURT: Based on evidence. I had not looked at all the exhibits. Thank you.

MR. DRUKER: Good night, your Honor.

NEIL CAHN: Your Honor, there is no trial on Friday; is that correct?

THE COURT: No trial on Friday.

20a MR. CAHN: Your Honor, may I ask that tomorrow morning the jury again be instructed that the London trip and the Hawaii trip are not part of the indictment.

THE COURT: All right.

(Thereupon the case was adjourned at 5:00 o'clock until 10:00 o'clock on May 6, 1976.)

* * * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- :

WILLIAM CAHN, :

Defendant. :

----------x

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 21 1976
TIME A.M.
P.M.

75-CR-645

United States Courthouse
Brooklyn, New York

May 6, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

JOSEPH BARBELLA
OFFICIAL COURT REPORTER

I hereby certify that the foregoing is a true and accurate transcript from my stenographic notes in this proceeding.

Official Court Reporter
U. S. District Court

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
-and-
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

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(Jury enters courtroom and the following takes place in open court.)

THE COURT: Good morning, ladies and gentlemen.

Before we start, I think I should repeat, the substance of what I said before is that the London and Hawaii transactions, while we are spending some time on them, are not part of the indictment. I am receiving evidence on them only bearing on things like motive or knowledge for the purpose of Mr. Cahn in connection with the bills that are disputed in the indictment.

Ifyou find anything wrong in the London and Hawaii transactions and not the other transactions, you cannot convict him for anything he did on those other transactions.

Are you ready?

MR. DRUKER: The Government calls Mr. Vernon L. Hoy.

V E R N O N L . H O Y , called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Hoy, would you tell the jury the place and nature of your present employment?

A I am the Director of the Arizona State Department of Public Safety.

Q And how long have you been so engaged?

A Since January 6th of this year.

Q Prior to that how and where were you employed?

A I was employed for twenty-six years by the Los Angeles Police Department. I retired from there as a Deputy Chief.

Q Now, did there come a time when you became affiliated with the entity known as the National Advisory Commission on Criminal Standards and Goals?

A Yes, while I was a Commander in the Los Angeles Police Department I was assigned to be the Executive Director of that effort, the Los Angeles Police Department was the recipient from a grant from LEAA.

Q And was any part of this known as the National Police Task Force?

A That's what it was known as, that's correct.

Q And what was its relationship to the National Advisory Commission?

A The National Advisory Commission on Criminal Justice Standards and Goals had a number of task forces. Four of those were operation task forces and the police task force was one of those.

Q And were these different task forces for different purposes?

A That's correct.

Q And what was the purpose of the National Police Task Force of which you were Executive Director?

A The purpose of that was to develop standards for police agencies throughout the United States. And we did just that. We developed, I believe, 108 standards that were published in a book, published by the United States Government Printing Office.

Q And do you know the defendant William Cahn?

A Yes, I do.

Q And did he at any time have any affiliation with the National Police Task Force, to your knowledge?

A Mr. Cahn was a member of that police task force, the police task force group that was an advisory group to the staff.

Q And for what period of time, if you are able to say?

A During most of 1972.

Q Now, in conjunction with Mr. Cahn's role as a member of the police task force did he travel from time to time pursuant to the police task force business?

A Yes, that's correct.

Q And on more than one occasion?

A Yes.

Q All right.

And what generally would be the nature of the business on which he would be traveling insofar as you would know?

A To attend a meeting of the police task force, to review the standards written by the staff and to advise on the adoption of standards for the police.

Q Now, would you tell the jury about the nature of the funding of the National Police Task Force?

A The funding was from Law Enforcement Assistance Administration.

Q LEAA?

A LEAA.

And the recipient of the grant was the Los Angeles Police Department. I believe it was fully funded by LEAA. That is, there was no match by the City of Los Angeles.

Q The Police Department received the money, and I take it administered it?

A That's correct.

Q Now, when Mr. Cahn would travel pursuant to the Police Task Force business would he submit any sort of claims or letters or anything in which he sought reimbursement for

some or all of his travel expenses?

A We -- the answer is yes, but we did not require the submission of a claim. The presence at a meeting would qualify the person for per diem expenses, and then we would ask for a copy of his air fare ticket and we would write a check for the cost of the air fare.

Q And did Mr. Cahn from time to time submit claims to you for his air fare expenses along with per diem --

A There was at least one occasion, yes.

Q Or travel vouchers, if you would?

A Yes, sir.

Q And were these -- how were these delivered to you in the ordinary course of business?

A They could either be mailed to us or hand-delivered to us at a meeting.

Q All right.

I am going to show you now Government 7A -- withdrawn.

Before I ask that, with regard to the checks, were there checks issued pursuant to these travel vouchers or claims?

A Yes, sir.

Q To the claimant?

A Yes, sir.

Q And in the ordinary, usual course of business how were these delivered to the claimant?

A Either in person or by mail.

Q Now I show you Government's 7A, 8A, 9A and 44A for identification and I will ask if you recognize those and can identify them as being business records of the National Police Task Force kept and maintained as such or photocopies of such records, I should say.

A Yes, they are.

Q All right.

And to the best of your knowledge and recollection with regard to 44A for identification, can you tell whether this was hand-delivered or whether it was sent through the United States Mails to you?

A That was sent through the United States Mails.

Q And with regard to the check that was issued pursuant to that letter or claim, can you tell whether or not that was hand-delivered to the claimant or whether it was sent through the United States Mails or some other means?

A That was sent through the United States Mails.

Q And with regard to the other three exhibits in front of you, are you able to answer those same questions with regard to each of those?

MR. DRUKER: It's stipulated between the counsel

for the Government and the defense that the claims were mailed with regard to those exhibits and similarly all right with regard to the checks?

MR. CAHN: Similarly with regard to the checks.

Q Now, Mr. Hoy, I think you testified that the police task force was funded entirely by the LEAA; is that right?

A That's correct.

Q And did Mr. Cahn -- was Mr. Cahn aware of this, to your knowledge? Was it ever discussed in his presence or was anything ever given to him that would indicate this to him?

A There were many discussions at the various meetings about this being LEAA funded and there being a dead line that we had to adhere to.

Additionally, I believe there was correspondence from him acknowledging that it was LEAA-funded in one way or another.

Q And the meetings you had mentioned, was he present at some or all of these meetings in which the LEAA funding was discussed?

A Yes, it was.

Q Now, looking at 8A and 9A for identification, the documents that I have just unfolded there, can you tell the jury what these are?

A Well, the top, there are checks or --

Q Just the small one.

Checks, you say?

A Yes. 8A is for $386 and 9A is $383.50.

Q To whom are those checks payable?

A William Cahn.

Q And on whose checking account, if you will, are those checks made out?

A Well, those were for -- I believe for meetings after the grant expired. So those two checks were for reimbursement for his attendance at police meetings, at police task force meetings.

Q On whose account, I am asking?

A It's not the police task force account. LEAA paid those directly.

Q And those are United States Treasury checks, are they not?

A That's correct.

MR. DRUKER: Your Honor, I will offer these four exhibits in evidence after being shown to Mr. Cahn.

MR. WILLIAM CAHN: No objection, Mr. Druker.

THE COURT: They may be marked.

MR. DRUKER: There is one thing I should point out, sometimes in the course of trial preparation I

circled three things here. I think it's impossible to get them off. I don't know for what purpose they were circled, but I will stipulate that those inked-in circles are mine and no meaning should be attributed to it.

THE COURT: What exhibit is it?

MR. DRUKER: 9A for identification or 9A in evidence.

THE COURT: Government's Exhibit 7A, 8A and 9A and 44A are marked in evidence.

(So marked.)

MR. DRUKER: Thank you.

Q I show you these two documents and I will ask if you recognize those and can identify them as being business records of the Police Task Force kept and maintained as such?

A That's correct.

Q And are they, generally speaking?

A Both are letters from William Cahn. One is directed to me and one is directed to Ed Davis, Chief of Police of the Los Angeles Police Department.

(continued next page)

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Hoy-direct

hr/ss

lam2

Q And would you tell the jury whether or not these relate in any way to LEAA funding or whether it's discussed within these letters?

A Yes.

MR. DRUKER: Your Honor, I'm going to show these two to Mr. Cahn, following which I will offer them as 44-C.

(Documents referred to handed to Mr. William Cahn.)

MR. DRUKER: These are offered by me with the understanding by counsel that they are offered solely on the issue of knowledge by Mr. Cahn of the LEAA funding of the Police Task Force and offered for no other purpose.

MR. WILLIAM CAHN: And with that, there is no objection.

THE COURT: Thank you, Mr. Cahn.

THE CLERK: These are marked Government's 44-C in evidence.

(So marked.)

Q Now, when Mr. Cahn submitted these several claims which you have just identified for his travel expenses, did he tell you at any time that he was also submitting claims to his home county, Nassau County, for his airfare

expenses for the same airfare expenses claimed in the claims to your organization?

A No, sir.

Q Did he at any time ask your permission to get reimbursement for his airfare from the National Police Task Force while also receiving reimbursement for his airfare or having his airfare paid for by Nassau County?

A No, sir.

Q And did your organization to your knowledge have any oral or written policy which would have either allowed Mr. Cahn to colllect reimbursement from more than one source for his airfare expenses or which would have prohibited him from collecting from more than one source for the same airfare expenses?

A We would have prohibited that.

Q And on what basis --

MR. WILLIAM CAHN: I don't think that that answer --

THE COURT: It's not a directly responsive answer.

You were asked if there was any policies and you stated what you would have done.

Was there a policy?

THE WITNESS: Yes, there was a policy, but I

believe it was unwritten.

Q And what was that policy?

A The policy that we go by the most restrictive rules of LEAA and the City of Los Angeles and the Los Angeles Police Department. And the City of LosAngeles and the Los Angeles Police Department policy would prevent that.

Q Now, did you receive your LEAA funding pursuant to a specific grant or grants?

A Yes, we did.

Q And were there specific or general purposes for this grant?

A Very specific, to develop standards for the police service.

Q Can you conceive of any situation in which your grant would have allowed payment to the home jurisdiction of one of the members of the National Police Force for either police cars or informant expenses or other local expenses?

A Only to the grantee, the Los Angeles Police Department.

Q And did you pay consultant fees from time to time to any participant of the National Police Force?

A No, sir.

Q Now, going back to Government 44 in evidence, I believe this is a letter addressed to you from

Mr. William Cahn dated June 29th, 1972.

A Yes.

Q And, Mr. Hoy, would you be good enough to read that letter to the jury.

A It's a letter directed to me;

"Dear Commander,

"Pursuant to your secretary's request, the following is my expense for the trip to Los Angeles:

"Acapulco to Los Angeles, $121.50. Los Angeles to New York, $163.00. Total coach fare $284.50.

"The reason I am not charging the Task Force the fare from New York to Los Angeles is because I made a stop in Acapulco and came to Los Angeles from there. I do not have the ticket since I misplaced it after my arrival home. It would be to no avail, however, because I travel first class but will bear the extra expense myself.

"I enjoyed my participation and apologize for leaving early. I am looking forward to my next meeting.

"Kindest regards to Ed. Thanks for everything.

"Sincerely, William Cahn, District Attorney."

THE COURT: Let me see it.

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Hoy-direct

(Handed to the Court.)

Q Now, that letter was dated June 29, 1972, was it not?

A Yes.

Q Mr. Cahn tell you in that letter or in a separate letter or orally at any time that on the day before June 28th, 1972, he had submitted his airline ticket to Nassau County so that they would pay for his airfare?

A No, sir.

Q Did Mr. Cahn tell you at any time, either orally or in writing, that Nassau County had paid for his airfare on that trip from New York to Los Angeles to Kennedy?

A A The question is, did he say that Nassau County had paid it?

Q Yes.

A No, sir, he did not.

Q Never?

A Never.

MR. DRUKER: Thank you, sir.

(Continued next page.)

CROSS-EXAMINATION

BY MR. WILLIAM CAHN:

Q Commander, could you tell the Court and jury how I was -- how I became a member of the Task Force, if you know? Who appointed me?

A I am really not sure if Ed Davis appointed you or if the administrator of LEAA appointed you. I believe it was a recommendation by Ed Davis and the actual appointment was by the Administrator of LEAA.

Q Now, who is Ed Davis?

A Ed DAvis is the Chief of Police of the Los Angeles Police Department. And at that time he was serving as the Chairman of the PoliceTask Force.

Q He was the Chairman of the committee on which I served?

A That's correct.

Q Commander, do you know whether or not I had any personal conversations with Mr. Davis in reference to travel?

A Not to my knowledge.

Q You don't know?

A I have no knowledge of it.

Q Now, you stated that there was some oral policy of the City of Los Angeles and the Los Angeles Police

Department which you followed in reference to --

A That we followed?

Q Yes.

A Yes.

Q Did you ever convey that oral policy to me?

A I don't recall.

Q And would there be any reason for me to know of any policy, oral or written, of the City of Los Angeles or the Los Angeles Police Department?

A No, but I would -- yes, with regard to the $25 per day and the $12 for a partial day, per diem, that is strictly the Los Angeles Police Department policy.

Q What does that mean?

A It means it's the limits we could pay for the participation in the Police Task Force efforts.

Q Did you ask for any vouchering for that?

A No. We asked the City of Los Angeles Controller to waive the requirement for people turning in a voucher.

Q So whether they spent the $25 or not, they got the $25?

A Except when they had knowledge that someone stayed with relatives or somewhere without paying a hotel bill, then we did not pay the $25.

(Whereupon, Mr. William Cahn and Mr. Druker

confer with each other out of the hearing of the Court Reporter.)

MR. DRUKER: Does your Honor have Exhibit 44-A?

THE COURT: It's right here.

MR. DRUKER: Thank you.

Here it is.

Q Commander, on Government's Exhibit 44-A in evidence, there is a check in the amount of $62 dated June 22, 1972. And I believe there is an indication that it says per diem. Is that correct?

A That's correct.

Q And may I ask you, sir, wasn't that check handed to me when I got there?

A I believe it was, at some time during your presence in Los Angeles.

Q Nobody asked me or you didn't ask me if I was sleeping with relatives? The check was given to me. Isn't that correct?

A That's correct.

Q Without any questions, without any submission of vouchers or anything else?

A Well, we had a check in the amount of I believe $85 or $84. And then we voided that and reissued a check for $62. And I don't recall the reason for that, but

the thing that probably happened, we learned that you stayed a day less than we had anticipated.

Q And at that time you presented me with a check for $62?

A That's correct.

Q And it was thereafter that -- after I left the meeting, was it not, when I returned and submitted the letter for the expenses, the letter which you read for the jury, recounting that I am charging the Task Force coach fare from Acapulco to Los Angeles rather than from New York to Los Angeles?

A That is correct.

Q And it was not the policy of the Los Angeles Police Department or the City of Los Angeles, was it, or LEAA, if you know, to provide first class airfare?

A It was the policy not to provide first class airfare.

Q And may I ask you, sir, what was the policy for first class airfare for elected officials for Nassau County in Nassau County?

A I'm sorry, I don't know that policy.

Q Now, Commander, would you tell the Court and jury, if you will, please, what was some of the work involved in this Task Force, just what we were there for?

A The staff composed of police officers from various parts of the United States drafting standards and then brought the committee together, that is, the police task force together. They would review the standards, give their input and then the staff would rewrite, if necessary, the standards and then support that with commentary.

Q May I ask you, if you will, please, would you inform the jury who were some of the members of our Task Force.

And, by the way, did you say police officers from all over the country?

A The Task Force staff consisted of police officers from the Los Angeles Police Department, Kansas City Police Department, Michigan State Police, Los Angeles Sheriff's Department, Arcadia, California, yes, Police officers.

Q Are you talking about our committee now?

A I am talking about the staff for the committee.

Q I am referring to the committee on which I served. What was the makeup of that and who were they?

A Clarence Kelly, then Chief of Police of Kansas City.

(Continued next page.)

Q He is now the head of the Federal Bureau of Investigation, is he not?

A That is correct.

Q He was one of the members of our committee, was he not?

A That is correct.

Al Ercolano.

Q Who is he?

A He is from Washington, D.C. I'm sorry, I forget the name of his organization.

Q Wasn't he involved with the medical examiners all over the country?

A He was the staff director for possibly the American College of Pathology.

Q Anyone else that you remember?

Benjamin Davis?

A Benjamin Davis.

Q Would you tell the jury who Benjamin Davis is?

A I believe Benjamin Davis is a retired general fromthe Air Force and worked for the United States Department -- for the U.S. Government at the time he served on the task force.

Q Wasn't he involved as an assistant secretary of one of the cabinet posts?

A Yes.

Q Anyone else that you remember?

A Dale Carson, Sheriff of Jeffersonville, Duval County Sheriff's Department.

Q Did we not have a representative of the mayors from all over the United States, a young man?.

A I am trying to think of his name, but it doesn't come to me. But, yes, there was a representative from the U.S. Conference of Mayors.

(Mr. William Cahn and Mr. Druker confer with each other out of the hearing of the Court Reporter.)

Q Do you remember the name of the superior court judge from Californai who was a part of our committee?

A Art -- Art -- I'm sorry, his last name doesn't come to me.

Q And it was the desire of the committee to set standards for police departments throughout the country, was it not?

A That's correct.

Q And would you say that each member of the committee had important input insofar as reaching the desired goal?

A Yes, indeed they did.

Q And immodestly, Commander, did that include me?

A Yes, indeed it did.

Q Thank you.

Now, do I understand that the LEAA funding was not directly to the task force?

A I believe it was funneled through the California State Planning Agency.

Q And then to the Los Angeles Police Department?

A That's correct.

Q And it was the Los Angeles Police Department who administered the funds for the task force?

A that's correct.

Q And it involved these various members from throughout the United States?

A That's correct.

Q Now, Commander, as a member of the Los Angeles Police Department did you at any time other than the Police Task Force travel for and on behalf of the Los Angeles Police Department?

A Yes, I have.

Q And when you did so did you submit claims for your travel expenses?

A Yes, I did.

Q By the way, were the members of the committee ever compensated, the members of the police?

A the policy was that there would be no honorarium,

only the per diem and travel.

Q Compensation, meaning wages or fees or honorarium?

A that's right. There was no compensation.

Q Now, Commander, did there come a time, as I had asked, that you submitted claims for your travel when you were a member of the Los Angeles Police Department?

A Yes. The standards for police employees were different.

Q When you travelled on behalf of the Los Angeles Police Department, Commander, didthe City of Los Angeles pay for your expenses, reimburse you for the expenses of your travel?

A If it was on behalf of a task force, it came out of the task force money. If it was not on behalf of the task force, it would come out of the City of Los Angeles money.

Q Let me make it clearer. Prior to the time that the task force ever existed, did you travel on behalf of the City of Los Angeles as a police officer?

A I did.

Q And when you did so travel were you compensated -- were you reimbursed for your travel expenses?

A Yes, I was.

Q Now, did there come a time, Commander, when -- I believe it was at a luncheon -- when you learned that I was

in Los Angeles on a county investigation of some kind?

A Yes.

Q And at that time, sir, did you ask me whether or not the County of Nassau was paying for any part of my expenses of the trip?

A No, sir.

MR. DRUKER: May the jury be reminded, your Honor, that questions are not evidence and only answers?

THE COURT: Yes, I have told them that. I don't have to say it again.

MR. CAHN: He answered.

THE COURT: Yes.

Q You did not ask me that?

A I did not ask you.

Q But you learned I was in Los Angeles on some county investigation?

A I believe somebody you identified as a member from your office from Nassau indicated you had some business in Los Angeles other than the task force.

Q And although you had in mind this oral policy of the City of Los Angeles, the Los Angeles Police Department, and the fact that LEAA funds were being used and that you were more or less the physical officer of the committee --

A I was overseeing the grant. I had a physical

officer working for me.

Q You did not ask me whether or not the County of Nassau was paying for any of those funds?

A I did not ask.

Q May I ask you, Commander, if in order to travel to a meeting of the task force in the City of Long Beach -- in the city of Los Angeles, I found it -- excuse me -- the defendant William Cahn found it necessary to borrow money or to get an advancement form the County of Nassau in order to make that trip, and after making the trip submitted a bill for his expenses to the task force, and when he received the check from the task force, returned it to the County of Nassau to repay the advance, would you say that that was dual reimbursement?

A the advance would have nothing to do with the payment.

Q Would you say, sir , that that was dual reimbursement?

A No.

Q And would it make any difference or would it be the concern of the task force as to what method the payment of the monies advanced from the County of Nassau took?

A Again, that would have nothing to do with the payment.

Q It would be none of your concern. Isn't that correct?

A That's correct.

Q And if a part of the method of advance the County of Nassau paid the air fare, either directly or indirectly to a travel agency, but the travel amount was there after being received from the task force, returned to the County of Nassau, may I ask you again would you consider that dual reimbureement?

A That would have nothing to do with the payment.

Q And again may I ask you, would it make any difference, nor would it be the concern of the task force, in what method was used to repay the advance from the County of Nassau?

A It would be no concern.

MR. CAHN: Thank you very much.

THE COURT: Any redirect?

MR. DRUKER: Yes, your Honor.

REDIRECT EXAMINATION BY

MR. DRUKER:

Q Sir, let's start out with a slightly different hypothetical, if we may. Let's assume Mr. Cahn travels on behalf of the task force and possibly on behalf of Nassau County and that his air fare os $559.

And further assume that Nassau County pays the $559 for his air fare to the travel agent or the airline; and Mr. Cahn spends nothing out of his pocket for air fare; he travels, he returns to Nassau County and he then submits a claim to the National Police Task Force for $284.50 for a portion of that air fare; a check is issued to Mr. Cahn and given ti him in the amount of $284.50.

Do you see any dual or excess reimbursement there?

A No, I don't. It's just --

Q You don't see any problem with that, the County pays his air fare in toto and then he submits a claim to the National Task Force and he makes a claim and you see nothing wrong?

A If he keeps it, yes. I would assume he would pass it over to his County in that case.

Q Let's assume, first of all, that he keeps it. Any problem there?

A Yes.

Q Let's assume he pays an informant with it. Any problem there?

A If the county is paying for his air fare, yes, there is a problem. It was our policy to not reimburse if someone else was paying the fare.

Q And would payment of a Nassau County informant or payment of other expenses by Mr. Cahn be consistent with the goals and aims of your project?

A No, sir.

Q Now, Mr. Cahn asked you about the conversation that you had - - withdrawn.

You testified on cross examination that the presence of someone from Mr. Cahn's office indicated to you that there might be some Nassau County business while he was out there. Is that correct?

A Yes.

Q Did anything indicate to you that Nassau County might be paying for Mr. Cahn's air fare and other travel expenses on that trip?

A No.

Q Did it occur to you at all that anything would lead you even to think that Nassau County might be paying his air fare expenses on that trip?

A No. I assumed that Nassau County paid the air fare of paid the expenses of his aide, but not his expenses.

Q By the way, did this question ever come up in the years 1970 through 1973, say regarding some of the individuals you have testified about already or the members of the Police Task Force travelling and being reimbursed by their home entities and whether or not the Police Task Force

could reimburse them?

A Yes, it has come up a number of times, both in that grant and in the following, on police chief executive grants.

Q And who would this come up? Would you raise the question with the individual or they would come up to you to raise it?

A No, in all cases they came to me and pointed out their air fare or their per diem was paid by their jurisdiction.

Q And was this question resolved in the term of the guidelines as you knew them or understood them to be?

A That I would not reimburse them.

Q Did Mr. Cahn ever come to you with any such question?

A No, sir.

MR. DRUKER: Nothing further.

(continued next page)

RECROSS EXAMINATION BY

MR. WILLIAM CAHN:

Q Commander, you testified on cross examination that the task force nor you would have no concern about the manner in which Nassau County was repaid for the advance on travel expenses. Is that correct?

A Yes, sir.

Q And if the County of Nassau saw fit to accept the payment of an informant as their obligation and accepted the payment of the informant as payment for the advance of the trip, would that be any concern of yours?

MR. DRUKER: I will object to this question, your Honor.

THE COURT: Overruled. I don't know if there is any testimony so far in support of it, but rather than fractionate the case I will let the witness answer now.

Suppose you restate the question.

MR. WILLIAM CAHN: I suggest Mr. Christ's testimony now.

THE COURT: Let's not argue about testimony now.

THE WITNESS: Would you restate the question, please?

Q Yes. If the County of Nassau accepted a payment

of an informer as a method for a repaying in advance of expenses they laid out, would that be any concern of the Task Force?

A Just as long as it was not a dual payment for a police task force meeting.

Q Yes, exactly.

And these other persons who approached you abou their jurisdictions paying for some of their expenses to attend the task force, they asked you and told you about that, is that correct?

A I'm sorry, the question isn't clear.

Q You testified on redirect examination that there were occasions when some members of the committee or thereafter came to you and told you, "Look, I'm being repaid by my jurisdiction for this trip, do I get it from LEAA as well or from the task force as well?" Is that the conversatio

A No, not really. They wouldn't ask; they would say, "Don't pay me the full amount or don't pay me at all because I am being reimbursed already." And that had happened on a number of occasions.

Q Yes. And if the individual did not believe he was being paid already, he would have no reason to approach you and tell you that?

MR. DRUKER: I am going to object. I think thi

is a jury question.

THE COURT: Sustained.

MR. WILLIAM CAHN: May I ask this question, your Honor?

Q If the defendant William Cahn did not believe he did not have any problem in the submission of his voucher to you, there would be no reason for him to approach you about it?

MR. DRUKER: Same objection.

THE COURT: Overruled.

A There would be no reason for him to approach me? That's correct.

MR. DRUKER: Your Honor, I will object on the basis, this is sort of like saying, ignorance of the law type of thing.

THE COURT: No, it's not.

I will cover the legal point in my charge.

A I agree there is no reason to approach me.

MR. WILLIAM CAHN: Thank you.

THE COURT: Thank you, Commander Hoy. You are excused. You are now Director, I guess?

THE WITNESS: Yes.

(The witness was excused.)

THE COURT: Next.

MR. DRUKER: The Government intends to rest. Before doing so I would like to have just a moment to just pass a couple of exhibits to the jury, if I may.

THE COURT: Suppose you do that.

MR. WILLIAM CAHN: Mr. Druker -- (Mr. William Cahn and Mr. Druker confer with each other out of the hearing of the Court Reporter.)

MR. WILLIAM: CAHN: May we have a side bar?

THE COURT: Yes.

(The following takes place at side bar out of the hearing of the jury.)

MR. DRUKER: Your Honor, the representative of the Americana Hotel is back today pursuant to Mr. Cahn's request. I had understood he was here for Mr. Cahn to put him on as part of the defense case. I had completed my examination of him as a Government witness. since the Government, is resting, your Honor --

THE COURT: What are you going to ask him? This may be reopening cross examination in light of the additional documents, Mr. Cahn --

MR. CAHN: Yes, I didn't have them with me. And I am terribly sorry for not making myself clear, but I intended to just show him some documents and ask him if it refreshes his recollection as to whether or not there was a problem at the time of the checkout.

THE COURT: Can you get him up here?

MR. DRUKER: Yes.

THE COURT: We will give the jury the exhibit to look at in the interim.

MR. DRUKER: I have no objection to that.

MR. CAHN: I understand, but --

THE COURT: Yes, what is it, Mr. Cahn?

MR. CAHN: I have a couple of witnesses scheduled today. Wednesday night, your Honor, I had a severe pain which I thought was a hernia. It turned out not to be. But it was taking my breath away. I was all right yesterday, but late last night it started again. I can go so much, but if I sit for any length of time it's taking my breath away again.

I am going to ask your Honor's indulgence. I will go as long as I possibly can, but I will ask if there comes a time --

THE COURT: Let me know. I will consider a physical problem.

(The following takes place in open court and in the presence of the jury.)

THE COURT: We reserved the right yesterday for Mr. Cahn to have further cross examination of Mr. Carisquilo, who is from the Americana Hotel in San Juan. And while he is coming up, Mr. Druker will give some

exhibits to the jury and you can look at that.

(Whereupon the jury views certain exhibits.)

THECOURT: Put on the record that Mr. Druker handed to the jury exhibit 28, 28 A and 27 A to look at.

MR. DRUKER: And also, if your Honor please, 5 A, 41 A and 41. We mightperhaps --

THECOURT: Suppose you give those to alternate number two and let them start down the back row.

(Exhibits referred to are handed to alternate number two.)

MR. DRUKER: and then lastly, 1 and 1 A, which I will clip together; 2 and 2 A and 3 and 3A, all of which are similarly in evidence.

Should I hold these or --

THE COURT: No, give those to Mr. Girardi. He is finished with the first set and they can go along.

(Handed to Mr. Girardi.)

MR. DRUKER: And if I just might clip the first group together --

THE COURT: All right.

L U I S C A R I S Q U I L O , perviously sworn, resumed the stand and testified as follows:

THE COURT: Mr. Carisquilo, you are sworn yesterday and you were called for some further cross exam-

ination and you may sit down and you are subject to the oath you were sworn yesterday.

MR. WILLIAM CAHN: May I ask that these two papers be marked for identification?

THE CLERK: So marked defendant's E and F.

FURTHER CROSS EXAMINATION BY

MR. WILLIAM CAHN:

Q Sir, I will not take too much of your time.

I asked you yesterday if your records indicated that there might be a problem -- that there was a problem at the time of Mr. Cahn's checkout on the day he checked out. And you said, if I am not mistaken, you didn't see any indication of that. Is that correct, sir?

A Yes.

Q I am just going to ask you to read defendant's exhibit A for identification to yourself.

THE COURT: E.

MR. CAHN: E, excuse me, sir.

Q Defendant's exhibit E for identification and defendant's exhibit F for identification to yourself, and just ask if that refreshes your recollection or if that would refresh your recollection, yes or no?

(The witness peruses the documents handed to him.)

THE COURT: Have you looked at them?

THE WITNESS: Yes.

Q Does that refresh your recollection as to whether or not there was a problem at the time of checkout?

A No. Actually --

Q No.

If I may, now, sir, you had records of my stay at the Americana Hotel?

MR. DRUKER: Again, your Honor, I am not able to hear or see the witness.

MR. WILLIAM CAHN: I'm sorry, I'm sorry.

Q You had records of my stay at the Americana Hotel, I believe, in August of that very same year, 1972. Is that right?

A August 11th to the 20th.

Q And, sir, may I suggest that that suite was fully complementary?

A Yes, it was.

Q Do you have that record, sir?

A Yes, it says here.

Q Is this page 2 of this?

A right.

MR. WILLIAM CAHN: May I offer this in evidence?

(Document referred to handed to Mr. Druker.)

MR. DRUKER: I don't see the relevance of this.

THE COURT: Come to the side bar.

(The following takes place at side bar and out of the hearing of the jury.)

THE COURT: What is the significance of this? This is not one of the items charged.

MR. DRUKER: No, your Honor.

MR. WILLIAM CAHN: Your Honor, it is my intention that there was a mistake insofar as the evidence produced by Mr. Druker is concerned, that the full complementary down there doesn't exist in that other bill that there was perhaps -- that the count to which Mr. Druker referred in the first case might have been added later. This is typewritten and this is handwritten. And I think it's entirely relevant that if Mr. Druker can't show that in his evidence I submitted bills to the County that were complementary and submitted bills for repayment, I think I can now show that there were complementary bills which in now way were submitted to the County.

I intend to do that. I don't want to call this gentleman back just for an effort to bring this in. I will connect it up in that way.

MR. DRUKER: that's like saying the Government charges me with committing bank robberies on twenty different days and I am entitled to show fifteen dif-

ferent days that I didn't commit bank robberies.

MR. BOGIN We may in a position to show that. It may be.

MR. WILLIAM CAHN: The analogy is quite different. In this particular instance the question is, having been in the position where I could charge the County a bill which was complementary, I didn't do so.

Now, Mr. Druker is showing evidence where he claimed I did and I will show I didn't.

THE COURT: I think you are entitled to argue it, although I am not sure of the validity.

MR. WILLIAM CAHN: Thank you.

(The following takes place in open court and in the presence of the jury.)

THE CLERK: Two page document is marked defendant's exhibit G in evidence.

MR. CAHN: Thank you. I'm sorry to have kept you, if I may.

(continued next page

FURTHER REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Carisquilo, the last documents that were marked in evidence, this is a copy of a complementary bill, referring to defendant's G in evidence, from August 9th to 20th or thereabouts in 1972. And was that pursuant to the National District Attorney's Convention in San Juan, that stay, do you know? Or was there a convention?

A There was a convention.

Q Now, can you tell from looking at those records -- while I will show you this group of documents -- and tell me, are these the originals of those records you have there?

A Yes, sir.

Q Among other things?

A Yes.

Q And can you tell whether or not Mr. Cahn's meals in San Juan, Puerto Rico on that trip were complimentary?

MR. WILLIAM CAHN: Mr. Druker, I will concede that the complimentary were full complimentary, meals, included, at the hotel.

Q Is that correct, sir, that everything was complimentary?

A We are talking to what trip?

Q August 9th to 20th now.

A Everything was full complimentary.

Q Okay. And do those records indicate whether or not Mr. Cahn took his meals at the Americana of San Juan?

A Well, there are some charges here indicating the coffee shop, in this case, the Gaucho Steak House.

Q Now, going back to the trip I questioned you about yesterday, and I show you government's 17 C in evidence, and I will ask you whether or not that trip was a full complimentary trip, or I should say was supposed to be?

A Well, actually it doesn't specify full complimentary. It only specifies complimentary. Like this what we do is complimentary on room, but not on the others. Here this bill was never paid, the other extras. It was rebated. It was written off by the hotel.

Q The room was complimentary, right?

A Yes.

Q And how much approximately or exactly, if you wish, was the room value that was comped on that?

A Well, the room, it says $78.75 with tax, five per cent tax.

Q And how many days?

A Three nights.

Q So roughly $230?

A Yes.

Q And how much was the bill for?

A 474.

Q So that leaves a difference of about $230, is that right, rooms and other incidentals?

A Right.

Q And Mr. Cahn ever pay for those items or anyone else in his behalf?

A No. It doesn't indicate on the bill it was paid. Rebate, rebate towards a writeoff.

Q And is it ordinary for an individual to sign a room bill if it's complimentary?

A Yes.

Q And in this case, was the room bill signed by Mr. Cahn?

A Yes.

Q And on occasion with guests checking out who have bills which they are supposed to pay, on occasion do they just sign for these and pay later on? Does that ever happen?

A Well, it happens. And Mr. Cahn was a very VIP person, so when he used to come, we just show him the bill. Like it shows here, he signed the bill. He was at the front desk.

Q And was it your expectation at the time he was shown the bill that he would pay for it?

A No.

MR. WILLIAM CAHN: Objection.

THECOURT: Overruled.

A Actually, since you see he was a VIP, all we do is give him the bill and if he wishes to sign, he signs it. And then it just goes back to accounting department. We get it out of the front desk and the accounting department decides whether he is going to charge him or not.

Q Now, on any of his trips to the Americana San Juan did Mr. Cahn ever pay any of the items of the bills to your knowledge, whether or not they were complimentary?

A to my knowledge, on what I have here, these bills were never paid.

Q Not one cent?

A Right.

MR. DRUKER: Nothing further.

THE COURT: Anything further?

MR. WILLIAM CAHN: Yes.

MR. DRUKER: By the way, I would like to offer into evidence -- maybe we should just make it a consecutive exhibit, the original documents relating to the August 9th to 20th convention.

(Mr. William Cahn and Mr. Druker confer with each other out of the hearing of the Court Reporter.)

MR. DRUKER: May I ask a few more questions?

THECOURT: All right.

BY MR. DRUKER:

Q With regard to the bills other than Mr. Cahn's bills included in that package there, can you tell whether or not any or all of those were complimentary or were unpaid, either one?

A This one you're showing me here?

Q Yes.

A This bill was given right off. None of these were complimentaries.

Q None of these were paid, right?

A No.

MR. DRUKER: And may these be marked as a group for identification.

THE CLERK: Next exhibit?

MR. DRUKER: Yes.

THE CLERK: Government exhibit 65 for identification.

MR. DRUKER: Thank you. I have nothing further.

THE COURT: Mr. Cahn, you may proceed.

FURTHER RECROSS EXAMINATION

BY MR. CAHN:

Q Sir, I again show you 17 C.

I asked you whether that bill was fully complimentary, and if I understood you, you said no. Is that right?

A Yes.

Q It was not fully complimentary?

A Well, let me explain something to you. The bill, it's complimentary. It doesn't say full complimentary. You have another bill there that says full complimentary. This doesn't say full complimentary.

Q The bill that I -- that you're referring to is defendant's exhibit G. That says fully complimentary?

A Yes.

Q The bill in Government's exhibit 17 C does not say full complimentary?

A Yes, sir.

Q Now, there are a lot of charges --

MR. DRUKER: If I may, your Honor, I think it should be pointed out that those two bills relate to two different trips.

MR. WILLIAM CAHN: Yes.

THECOURT: I think the Jury understands that. They have different exhibit numbers.

MR. WILLIAM CAHN: Yes.

Q There are a number of charges other than room charges in Government exhibit 17 C. The trip -- Let's be more

specific -- that took place when?

A May 3rd to 7th.

Q Yes. And there are a number of charges on the bill from May 3rd to the 7th that are in addition to the room charges. Is that correct?

A Yes, sir: yes, sir.

Q Now, sir, were those charges paid by William Cahn?

A No, sir.

Q So the bill was or did become fully complimentary

A Well, on the 8th accounting department writeoff of the account.

Q The whole account?

A Yes.

Q And at that time, sir, would you say that the bill became fully complimentary?

A Yes.

Q Now may I suggest to you, sir, could that have given rise to a problem at the time of the checkout?

A I would say yes.

Q It could have? There might have been a problem?

Now, in People's 17 C there is a letter -- I show you it -- Again I ask you to -- I ask you whether you know who Chago Munoz is?

A Yes, I know who he is.

Q Who is he?

A Chago Munoz used to be the director of sales in San Juan, the Americana of San Juan.

Q May I suggest to you he was in charge of the convention represented by this bill?

A Yes.

Q I show you defendant's exhibit E in evidence and I ask you if you recognize the signature on that letter?

A No.

Q You do not.

THE COURT: That's for identification.

MR. WILLIAM CAHN: Defendant's exhibit E for identification.

Q But now, sir, you testified that there could have been a problem at the time of the checkout of --

A There could have been.

MR. DRUKER: Again, your Honor, if Mr. Cahn please --

MR. CAHN: I'm sorry, I just wanted to take that from him.

Q -- in reference to Government's exhibit 17 C?

A Yes.

MR. CAHN: I have no further questions.

FURTHER REDIRECT EXAMINATION

BY MR. DRUKER:

Q Mr. Carisquillo, just to clarify, if the notation on the bill of registration says comp, what does that mean?

A Room complimentary.

Q Only room?

A Only room.

Q And if the registration bill says full comp, what does that mean?

A It says full complimentary.

Q And in addition to the bills referring to 17 C now, which is on your left, is that signed -- the top document -- is that signed at the time of checkin or checkout or some other time?

A You mean the registration card or --

Q The registration card, yes.

A This is when you check in.

Q And it says on the top, comp, is that right?

A Yes.

Q And when is that put on there?

A When the person checks in at the hotel.

Q And is it on there at the time he signs?

A No.

Q Not necessarily?

A Not necessarily, because the room clerk is the one who makes the notation.

Q Now, you state that there might have been a problem on the checkout. And we are talking about 17 C in evidence, again.

Would this problem have been in regard to the room portion or with regard to something else?

A You see, I don't know if there was any problem or not. It could have been a problem, or if he would have known it was full comp or something. But actually I don't know if there was a problem or not.

Q There's no question that the room was complimentary, right?

A There is no question on that.

Q So if there was a problem, it would have to relate to whether or not the meals, beverages, and other items were complimentary or supposed to be paid for. Is that right?

A Right.

Q But at any rate, you don't know of any problem, do you?

A No.

MR. DRUKER: Thank you.

FURTHER RECROSS EXAMINATION

BY MR. WILLIAM CAHN:

Q Just one more thing, sir.

If there is only a room comp, if only the rooms are complimentary, nothing else, would all of the charges ordinarily be on the same bill?

A If what? Would you say that again?

Q If only the room is complimentary --

A Yes.

Q It's not fully complimentary --

A Yes.

Q Just the room, would all of the charges to the guest who is receiving the complimentary room ordinarily be on the same bill or --

A It would be on the same bill.

Q Sir, may I ask you, wouldn't the other charges be on a separate bill?

A No, sir; no sir.

Q Never.

A Never. This is the -- It says here, actually, complimentary. And on this year we changed the procedure. On those days we used to post the room and taxes to the bill. Now a person goes complimentary to the hotel, we don't compose the toom and taxes. And on this we still had the procedure

of posting the room just for accounting purposes.

Q And then, if I understood you correctly, if a room is complimentary at the time the guest checks out, all the room charges are added and all of the other charges on the same bill are deducted from that?

A Yes, yes.

Q And at no time is there another separate bill for incidentals?

A No.

MR. WILLIAM CAHN: Thank you.

THE COURT: Thank you, Mr. Carisquillo. You can go back to Puerto Rico.

MR. DRUKER: Your Honor, the Government rests.

THECOURT: I will ask the jury to go back to the jury room. You will have about fifteen minutes. I think there is no harm in taking your exhibits in and those who haven't looked at them can read them in the jury room.

(The jury leaves the court room and the following takes place out of the presence of the jury.)

THE COURT: Mr. Cahn, I will listen to your motion now.

(continued on next page)

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MR. NEIL CAHN: May I have the Exhibit 1-A, 2-A and 3-A?

MR. DRUKER: Those are the ones I have given to the jury.

THE COURT: I think the problem on that is that those are the bills that Mr. Cahn paid -- that Mr. Cahn repaid the money to the County Treasury.

MR. NEIL CAHN: My motion is not directed to that.

THE COURT: What?

MR. NEIL CAHN: My motion is not directed to that.

THE COURT: All right.

MR. NEIL CAHN: Can I see the exhibits?

MR. DRUKER: I think the jury has the actual exhibits, but you have exact photocopies which were handed over at the time of arraignment.

THE COURT: I will get it out from the jury, if it's important.

MR. NEIL CAHN: No.

At this point, your Honor, the defendant moves to dismiss each of the forty-five remaining counts of the indictment. Specifically with respect to Counts 1 and 2, the Government has failed to prove and make out a prima facie case as charged in the indictment.

More specifically, each count specifically states that the defendant -- let's see -- and I will quote the language -- the National District Attorneys' Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA in the same language as contained in Count 2 of the National District Attorneys' Association was funded by the LEAA and thereafter paid the aforesaid claim with funds provided by the LEAA.

Proof in this case clearly demonstrates that the National District Attorneys' Association neither paid the defendant nor were they the recipient of an LEAA grant in that regard.

I point out to your Honor that this problem of two different entities in the same counts were specifically mentioned in the pre-trial motion to dismiss. And I think there is absolutely a total fatal variance with the indictment.

THE COURT: I thought I ruled on that already.

MR. NEIL CAHN: I don't remember -- I don't remember a ruling.

THE COURT: It doesn't have to be a direct grantee if the money came from the LEAA. And I thought the NDAA had only 5 percent of private funds and 95 of LEAA.

MR. NEIL CAHN: The indictment charges that the National District Attorneys' Association paid the defendant. There is no proof that the National District Attorneys' Association paid the defendant at all any more than it paid him with LEAA funds.

THE COURT: Well, Mr. Druker, is there any problem in your mind on that?

MR. DRUKER: No, your Honor. I think the checks are quite clear. The testimony was that with regard to these particular trips he was traveling and paid pursuant to LEAA grant. And the checks themselves I think say National District Attorneys' Association on the top and some of them even say Special Account.

THE COURT: And don't the vouchers say pursuant to LEAA guidelines?

No, that part of the motion I will deny.

(Mr. William Cahn and Mr. Neil Cahn confer out of the hearing of the Court REporter.)

MR. NEIL CAHN: Your Honor, can I see the exhibits now?

THE COURT: All right.

Tell the jury we want 1, 2 and 3.

All right. What else have you?

MR. NEIL CAHN: Your Honor, on Count 3 there is

a charge that the defendant falsely stated that he was not receiving dual compensation within a manner within the jurisdiction of the LEAA. The Government's witness from the LEAA defined compensation as meaning wages, salaries and fringe benefits.

THE COURT: Well, that's a frivolous argument. The count reads that he was not receiving dual compensation for the aforesaid expenses. Compensation means different things at different times. And here it clearly means reimbursement of expenses.

MR. NEIL CAHN: May I submit that LEAA defines compensation as wages, salaries, fringe benefits and specifically it distinguishes that from expenses.

Your Honor --

THE COURT: Well, I don't -- I still think it's a captious argument.

Motion denied on that.

MR. NEIL CAHN: I call your Honor's attention to Page 2 of Government Exhibit 1-A in evidence.

THE COURT: Let me look at it.

(Document referred to handed to the Court.)

MR. NEIL CAHN: And I call your attention to Page 2 of Government's Exhibit 2-A in evidence.

(Document referred to handed to the Court.)

THE COURT: Well, I don't know what the second

page is for. The first page says I further certify that other funds are not available and I am not receiving reimbursement from any other source.

MR. NEIL CAHN: Your Honor, the check is a check on the National College of District Attorneys.

THE COURT: Yes.

MR. NEIL CAHN: And the proof is that the college paid him. And the indictment is not that the college paid him. The indictment is that the National District Attorneys' Association paid him. It is not charged that he was paid by the National College.

THE COURT: It says application for reimbursement for airfare expenses filed with the National College of District Attorneys.

MR.NEIL CAHN: I am looking at the indictment charges, your Honor that he was not -- not that he was paid by the college. The indictment charges he was paid by the National District Attorneys' Association.

THE COURT: No. It says he was paid by funds provided by the LEAA.

I think the evidence was that the National College is sort of a subsidiary of the National District Attorneys' Association.

I don't think that's a fatal variance.

MR. NEIL CAHN: Your Honor, with respect to the remaining counts, none of which involve any affirmative misrepresentations, rather, I think they are all consistently dealing with non-disclosures.

I submit that in order for those non-disclosures to be deemed fraudulent and for the elements of wilfulness and knowledge as required by the false statement section of the United States Code and the specific intent required by the mail fraud statute, that there must be both a legal and actual prohibition of the conduct and that prohibition must be in fact actually known by the defendant.

Further, that there must be proof that in light of that actual knowledge the defendant intentionally intended to circumvent that known legal binding prohibition.

THE COURT: I will follow Judge Looling's ruling on that. He said that filing duplicate claims for one expense without disclosing the facts to one or both of the persons to whom the claims were represented can in and of itself be fraudulent. His original writing was that it was. He left it to the jury to say whether it was fraudulent. And I will do the same thing.

Motion denied.

MR. NEIL CAHN: Your Honor, with reference -- is that from the charge, your Honor?

THE COURT: Yes.

MR. NEIL CAHN: Your Honor, with reference to Judge Dooling's charge that one sentence is an alternative method of stating the four elements of the crime which Judge Dooling, I believe, repeats six or seven times --

MR. DRUKER: It was not an excerpt from that, is my recollection. This came out of Page 27 to 31 area of the charge, which is long after the essential elements had been given seven times. This excerpt was from somewhere on Page 27 to 31.

MR. NEIL CAHN: All I am looking for is the concession that the four elements charged by Judge Dooling are indeed essential.

THE COURT: Yes

MR. NEIL CAHN: The third element of that is knowledge. And that knowledge must be actual.

And there is no proof concerning the communication by the various private entities of a prohibition describing double reimbursement per se.

THE COURT: Can't the jury determine whether an honest man would try to collect twice for the same expense?

I think Judge Dooling said you don't need a law to prohibit it. You need a law to permit it.

MR. NEIL CAHN: Your Honor, are you indicating -- maybe I am misunderstanding.

You are going to allow the jury to declare what is criminal conduct without any statute --

THE COURT: I am going to allow the jury to determine whether a man of common sense should know that you don't bill two people for the same reimbursement on your issue of knowledge.

MR. NEIL CAHN: Your Honor, would your Honor allow proof of all the various instances in which any kind of double billing is done?

THE COURT: I thought wewere arguing on the record that is here now.

MR. NEIL CAHN: Agreed -- well, on the record. I am just trying to figure out some guidelines as for the defense and perhaps in preparation of the charge. I think your Honor has indicated your determination on the motion.

THE COURT: Yes.

MR. NEIL CAHN: If my understanding is correct, you are going to let the jury determine whether something that is not prescribed by any law nor which the defendant was told was prohibited, can now

be deemed criminal?

THE COURT: No. It's a question of the definition of fraud. The crime is fraud. And the jury can determine whether it is fraudulent to ask two people to repay the same expenses without telling them that you're double billing.

Isn't that what --

MR. NEIL CAHN: No, your Honor.

THE COURT: Then I misread his charge.

MR. NEIL CAHN: Your Honor, the third element of the crime, my interpretation of your conception is that it eliminates totally that third element.

THE COURT: What is the third element?

MR. NEIL CAHN: Knowledge.

THE COURT: He knew he was submitting two bills to the same people.

MR. NEIL CAHN: That is not the knowledge element Judge Dooling is talking about now.

THE COURT: We will cover that in the charge and I will deny the motion now. And we will get to knowledge in due time.

MR. NEIL CAHN: Your Honor, in that regard, if you're going to lay it to the common sense of the jury, will your Honor accept as relevant proof all the various instances in the commercial world

where any kind of double billing or similar type conduct is recognized?

THE COURT: I don't know. I haven't had any submitted to me yet.

MR. NEIL CAHN: I have done so in the insurance area.

THE COURT: Insurance is clearly irrelevant. You're paying for insurance.

MR. NEIL CAHN: And here you're performing services for two different groups.

THE COURT: You have said this is not compensation. This is reimbursement.

MR.NEIL CAHN: Your Honor said it is compensation.

THE COURT: It's compensation for expenses. It's not compensation for work.

MR. NEIL CAHN: There is an agreement between the defendant and a private group to pay expenses.

THE COURT: Yes.

MR. NEIL CAHN: In accordance with that agreement he performs. He entitled to expenses.

In the insurance case there is an agreement to pay a premium. If a condition occurs, they must pay expenses.

It is not the Court of Appeals of the State of

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New York specifically in the four cases, and I will give you more, if your Honor wishes. They did not find anything prohibited against a double recovery of expenses, if that is the individual agreement between the various associations and individuals. It has come up in situations not involving dual payment of premiums.

I believe Judge Dooling recognized the practice in messenger service, Parcel Post.

MR. DRUKER: No, Judge Dooling -- he recognized certain things existed. But he did not in any way deem them analogous to the present situation. In fact, he rejected it.

(Continued next page.)

THE COURT: Let's stick to the motion and we will get to the question of admissibility of evidence later on.

I thought you were going to move on counts one and two since they were repaid, the Government hasn't shown fraudulance.

MR. NEIL CAHN: there are a couple of additional motions I would want -- Next I think the proof on this matter as far as the mail frauds indicates that the mailings in issue were not the type contemplated by the mail fraud statutes. They are not integrally related nor incidental to the scheme, if any.

Your Honor, I note for the record that the proof is that the monies I believe in counts one and two, the proof is that the monies were returned immediately upon receipt, for your Honor's consideration.

THE COURT: I believe the mail fraud argument I dealt with in the pre-trial motions. And there was complaints to mailing incidentals, but this is the actual mailing of the check and the claims and not incidentals. So I will now hear you on counts one and two and let me take a look on whatever exhibits, exhibit C.

MR. WILLIAM CAHN: Your Honor, this is the original of that exhibit and it's clear.

THE COURT: Let me see it.

(Handed to the Court.)

TH EOURT: Mister Druker, on counts one and two the County was reimbursed within a few weeks after the money came in. Is there any reason why that doesn't clear Mr. Cahn?

MR. DRUKER: I think so, your Honor. May I take a look at the exhibits, just for one moment, so I can be certain as to one of the arguments I would like to make?

THE COURT: Yes. Just a minute.

(Documents referred to handed to Mr. Druker.)

THECOURT: It appears to me that the reimbursement checks from the National College of NDAA were dated November 27th. And the repayment to the County was December 9th, which is really ten days after he would have received the check.

MR. DRUKER: Your Honor, our contention here is that this presents a jury question, a genuine jury question on one A and two A. The Government would contend if this happened at a time when this matter had -- after the election, after this matter had been made public and Mr. Cahn was under investigation, that he did this, that it was actually a self-serving sor t of thing. He committed another fraud for two reasons. One, so he

can say, "See this, even after I was accused of committing double billing I still did this because I knew there was nothing wrong with it." And the fact that he repaid the money to the County, it wasn't obviating the fraud. If anything, it was pursuant to the genuine scheme charged in the indictment continuing from 1969 to 1974, and that this was an actual, self-serving act.

THE COURT: But it can be interpreted the other way, that question having been raised and he not having been re-elected, he didn't want any more problems so this one he turned back.

MR. DRUKER: It's like doing something and you get caught and you say, "I didn't think there was anything wrong with it." And someone else says nothing is wrong with it and you do it again and say "Look, I have no fear of it being wrong."

And moreover, your Honor, at the time he certified here, I further certify that other funds are not available, and I am not receiving reimbursement from any other source. And in the first instance that was false. He was getting reimbursed by another source. And in the second instance, other funds were available. The County was willing to pay for both the informant and his air fare. So that doesn't help him, the fact that after he committed a fraud he paid the money back.

THE COURT: I want to see exhibit one.

MR. DRUKER: I gave your Honor what I have. Here is three.

THECOURT: I want exhibits 1 and 2.

MR. DRUKER: The county claims?

THE COURT: Yes.

MR. DRUKER: The jury might have that, too.

THE CLERK: I thought they were clipped together.

THE COURT: Yes, here they are.

MR. DRUKER: In other words, those statements were false at the time they were made.

THE COURT: Mr. Cahn, this is a little bit like the Lazowitz case I ruled on where perhaps there was an income tax evasion charge and the income taxes were paid but the government still indicted and they say they had a right to.

There is a claim which was made against the County while the claim to the National College was still outstanding.

I thought you were home free on that receipt, but Mr. Druker says it's still a jury question.

MR. WILLIAM CAHN: Your Honor, the basis of Mr. Druker's statement seems to be that other funds were available. And I think that the comptroller of Nassau County made it clear that he would not pay for

any air fare or expenses for me to attend a lecture at the National College of District Attorneys that had nothing to do with the County.

And, therefore, the funds for that particular purpose were not available. They were used and obviously they were a loan.

Now --

THE COURT: I thought you were trying to show you were doing county work as well as National College work.

MR. DRUKER: I think it's represented right on the claim, your Honor.

MR. WILLIAM CAHN: There was no question, your Honor, that that was the basis of my ability to obtain funds from the prosecution fund.

Mr. Christ also testified, did he not, that unless there was County business I couldn't even get an advance. The basis of the advance, your Honor, was the fact that there was County business. The advance was made. But they certainly were not made -- were not available to me for the purpose of lecturing at the National County of District Attorneys.

Now, the check I believe is dated November 27th. But there is no evidence as to when the check was received by the office. I don't know when it was, but

the deposit was made a very short time after that, December 9th, I believe. And it was some time around that time when the check was received.

I might point out, your Honor, that if as Mr. Druker tries to explain, that my hand was caught in the cookie jar, and that is why I put the money back, I didn't have to bill the National College at all. I could have just said, look, they caught me. This time I will not do anything.

MR. DRUKER: It's a jury question.

MR. WILLIAM CAHN: But I did bill --

MR. DRUKER: Please --

THE COURT: Go ahead.

MR. WILLIAM CAHN: But I did bill the college and I did return that money. And I think that in and of itself negates any possibility of any criminal action on the part of the Government.

And may I make clear, your Honor -- I believe -- and I respectfully point out to you -- that I think your Honor is mistakenly making a difference or creating or confusing, if you will, the National Center for Prosecution Management, which is sort of an off-shoot of the National District Attorneys' Association.

The National College of District Attorneys' Associations has nothing to do or is in no way connected

with the District Attorneys' Association, but just has members of the Association on its board.

And I respectfully point out to your Honor in count one, that he states that I got funds from the LEAA, an agency of the United States, and then talks about my filing expenses with the National College of District Attorneys.

And the indictment thereafter says the National District Attorneys Association was funded by LEAA.

THE COURT: You mean there is a mistake in the indictment there?

MR. WILLIAM CAHN: And I say it to you, it is fatal, sir, at this time, since Mr. -- since Neil Cahn pointed the very thing out in his argument to dismiss at the beginning and put the Government on notice.

MR. DRUKER: The count alleges that he knowingly made a false statement in a matter within the jurisdiction of the LEAA, an agency of the United States, by falsely stating in his application that he was not receiving any reimbursement from any other source.

THE COURT: But your last sentence is wrong, is irrelevant.

MR. WILLIAM CAHN: To who?

THECOURT: The last sentence indicates that the

National District Attorneys' Association pays a claim with funds provided by the LEAA.

MR. DRUKER: Your Honor, all I can argue there is that just as -- that is just an obvious typographical error and it obviously refers to the National College of District Attorneys, which is what all of the evidence was and which is what the sentence preceding to that is, too.

MR. WILLIAM CAHN: Your Honor, this applies in count one, in count two, and in addition the fact that the monies were repaid, and I believe at this particular time after placing the Government on notice as to this vital discrepancy in my judgment, I think that these so-called obvious typographical errors are fatal insofar as these counts are concerned.

MR. DRUKER: Your Honor, I might say that all of the evidence to the grand jury and to the trial on both those counts was that it was the National College of District Attorneys, and I submit that that is an obvious type of --

THE COURT: Well, some things you can correct. I am not sure on that.

As long as I have denied the other motions, I will deny this with leave to renew at the end of the case on counts one and two.

MR. WILLIAM CAHN: By doing that, your Honor, you are placing me in a position to present evidence on counts one and two, whic' in my judgment is not only basically unfair, but in violation of my constitutional rights. I think I am entitled to know exactly what I am going to have to face and make a decision as to whether or not I am going to testify or put in a defense.

MR. DRUKER: Your Honor, if it had said National District Attorneys' Association throughout the count, then I think Mr. Cahn's point would be well taken. But I submit it's queer and I am willing to -- if it comes to that -- to take my chances on appeal. I believe this is not a fatal variance.

THE COURT: Well, I invite some cases on what a fatal variant is. And I am not prepared to decide that at this point.

Ifthere are two more counts that you have to face, I don't think that that is a denial of constitutional rights at this stage.

MR. WILLIAM CAHN: I take exception to the fact that even one more count is as serious to me, your Honor, and I am sure you understand. And I do not mean to be disrepectful or frivolous, but if I am convicted just on one count, it is as serious to me as if I were

convicted on 48 counts.

THE COURT: If the jury thinks they are helping you by convicting you on one count, they are wrong.

MR. NEIL CAHN: YOur Honor, for the record, I note that on page 15 and 16 in the defendant's memorandum in support of his pre-trial memorandum to dismiss the indictment, it states in counts one and two all that was alleged is that the defendant made or caused to be made a false --

THE COURT: Where are you? Oh, this is the Government's.

THE CLERK: This is the pre-trial motion?

MR. NEIL CAHN: Yes.

MR. DRUKER: By the way, this is not really a variant. Because the proof is that -- All of the proof goes down the line on the counts. This-- It's actually a different situation and I think the motion based on this particular defect, if it is a defect, is untimely. And I will add that to my arguments.

MR. NEIL CAHN: Untimely?

MR. DRUKER: That it should have been made before trial.

MR. WILLIAM CAHN: I suggest that it was, your Honor.

MR. NEIL CAHN: Your Honor, would you like to

look at --

THECOURT: This is it, this is it.

MR. NEIL [illegible] Your Honor, at the bottom of page 14.

THE COURT: Yes.

MR. NEIL CAHN: It's noted that --

(Whereupon there was a pause in the proceedings.)

THE COURT: Well, I look at that primarily with reference to the Candella case and the similar cases.

MR. NEIL CAHN: But I just want to point out --

THE COURT: If I come to a conclusion earlier than the end of the case, I will let you know on that.

MR. NEIL CAHN: Thank you, your Honor.

MR. DRUKER: Thank you, your Honor.

THE COURT: Now, I said be ready around noon. If we take a five minute recess, are you ready to go ahead, Mr. Cahn?

MR. WILLIAM CAHN: Yes, your Honor. I believe I have two witnesses here. And then it is my intention to take the witness stand and I am going to ask your Honor -- I don't feel well. I know it's nothing, but it's just causing me tremendous discomfort.

THE COURT: Well, I will take a long recess, a long noon recess and we will see how you feel after that.

MR. WILLIAM CAHN: Thank you, your Honor.

TH E COURT: Take a five-minute recess.

(A recess was taken.)

(The following occurs out of the presence of the jury.)

MR. GOLDMAN: Mr. Cahn hasn't seen this, but I have been handed an affidavit from Janet Asposato, an attorney with the Department of Justice, the Criminal Division, with regard to the letter we have presented from Mr. Thornberg with regard to the subpoena Mr. Cahn had served on the Attorney General. And I will take it off the back of the envelope and hand it up.

THECOURT: Yes.

MR. GOLDMAN: I haven't had time to make copies of it, your Honor.

THE COURT: Mr. Cahn can look at it and make copies of it later on.

(Document referred to is handed to Mr. Cahn.)

THE COURT: Did they sent two copies, as they frequently do?

MR. GOLDMAN: Yes, your Honor, two copies and an original.

THE COURT: Well, that doesn't give Mr. Cahn much help.

MR. CAHN: Your Honor, I certainly recognized from my own experience the difficulty of the task which

the subpoena would entail, but I certainly believe that in and of itself it would not be sufficient grounds for the Government to completely ignore the request. At least some attempt should be made by going through some files. There are very -- There are rather numerous cases, your Honor.

THE COURT: I can think of three of four people in my eight years that have been shot or that have disappeared, but I don't know the names and I would have to go through a couple of thousand case files to look for them.

MR. DRUKER: I can think of a number of them, too, in the Eastern District of New York. but in the strike force we never kept any records or indexing of any kind. I don't even know that we filed the newspaper clippings.

THE COURT: No, I think you can get testimony perhaps of somebody connected with the police or an agency with respect to the risks that there are to informants.

MR. WILLIAM CAHN: If your Honor so desires.

THE COURT: As this is a Nassau County informant involved. What happens to Federal witnesses under the witness protection program is different.

And I can see that the information might be inter

esting to you but I don't think that I can do anything about the Government with this if they can't -- if the Government says they can't produce.

However, I will hear you gentlemen after lunch, further, if you wish.

MR. DRUKER: I will stipulate that being an informant is risky business, without question.

MR. WILLIAM CAHN: I believe that Mr. Druker and I can come to some satisfactory concessin.

THE COURT: All right.

MR. WILLIAM CAHN: Before you bring in the jury, your Honor, might I ask if it is possible to have the Court -- of course, at the defendant's expense -- have the marshalls in San Juan Puerto Rico serve subpoenas on one Chargo Munoz whose address I will give and Mr. Jerome P. Solomon?

THE COURT: What do you expect them to show?

MR. WILLIAM CAHN: they have what I believe to be important testimony insofar as San Juan, the Americana Hotel trip.

MR DRUKER: This would be at Mr. Cahn's expense, right?

MR. WILLIAM CAHN: Yes, at my expense.

MR. DRUKER: I think if the marshalls were given subpoena and possibly with the direction of the Court

that they might be able to Telex it or wire it, as it were, to Puerto Rico so that the authorities there would have a document which would at least temporarily constitute a subpoena and they could serve on the witness.

MR. WILLIAM CAHN: I don't mean for this to be at the Court's expense or the Government's expense, but it would be simpler.

THE COURT: Yes, I will do it.

MR. WILLIAM CAHN: Thank you.

THE COURT: If it was to be the government's expense, I would want more information as to how relevant their testimony was going to be. If you are going to spend money for it --

MR. WILLIAM CAHN: I will have to and I am not asking the government to pay for it. All I am asking the Government to do is to serve the subpoenas for me, which would be more convenient.

MR. DRUKER: Yes.

THE COURT: Yes.

I have a lot of law work in chambers. I would like either parties to give me the -- as to what is variance, because there obvisouly is a reference to the National District Attorneys' Association in counts one and two and it should have been to the National College

of Attorneys. There must be some cases. I would appreciate it.

MR. DRUKER: I did some research on it for the first trial, due to what I had worried about was a variance, and I can assemble those cases.

THE COURT: And same for your.

MR. NEIL CAHN: I will bring it in on Monday morning.

THE COURT: You are ready now?

MR. WILLIAM CAHN: Yes.

(The jury entered the court room and the following took place in open court and in the presence of the jury.)

THE COURT: We are ready now for the defendant's case.

Mr. Cahn, you may proceed.

MR. CAHN: thank you, sir.

Angelo Roncallo

A N G E L O R O N C A L L O , sworn as a witness by the Clerk o the Court, testified as follows:

DIRECT EXAMINATION BY

MR. WILLIAM CAHN:

Q Mr. Roncallo, would you tell the Court and jury your profession, please?

A I am a practicing attorney. I am also a member

80 Roncallo - direct

of the Nassau County Board of Assessors.

Q And how long have you been a practicing attorney?

A I was admitted 1954-55.

Q Mr. Roncallo, may I request you to keep your voice up so that the last juror in the box can hear you at all times?

A Yes, I will.

Q Thank you. Mr. Rancollo, prior to being a member of the Board of Supervisors -- the Board of Assessors what was your position?

A I was a member of Congress from 1974, 1974. That was the 93rd session of Congress.

Prior to that I was a comptroller of the County of Nassau from 1968 to 1973.

Before that I was town counselman from 1965 to 1968.

Before that I was a practicing attorney.

Q And Mr. Roncallo, do you know me?

A Yes, I do.

Q And for how long?

A I think I have known you ever since I have been active in Government, probably since 1955-56.

Q We are good friends?

A Yes, we are, sir.

Q Now, in January of 1970 you were comptroller of the County of Nassau?

A Yes, sir, I was.

Q And at that time do you know of any governmental position that I -- that the defendant William Cahn held?

A At that time you were the district attorney of Nassau County while I was the comptroller of Nassau County.

Q Now, in January of 1970, Mr. Roncallo, did you have a conversation with the defendant, William Cahn, in his office about an informer?

A I had a conversation with you sometime in January. I don't recall the year. Probably 1970. I am not sure. At which time I came up to your office at your request, yes, sir.

Q Would you tell the Court and jury, if you will, what the subject matter of that conversation was and what I said to you and what you said to me, to the best of your recollection?

A When I arrived at your office, you indicated that you were concerned about the confidentiality of an informant. We had a fund out of which informants are paid. But you did not want to send the claims through that fund because of your concern about the confidentiality. And you asked me if there was another way to process the claims or if you could circum-

vent, I guess, the usual process that we used at that time.

Q Anything else?

A Not that I recall, no, sir.

Q Was there any discussion, Mr. Roncallo, about -- well, I will withdraw that.

Did you indicate that payments to informants were proper, but had to be --

MR. DRUKER: I will object to that leading. Mr. Roncallo may testify to the conversation rather than Mr. Cahn.

THE COURT: Yes.

MR. WILLIAM CAHN: He didn't recall, your Honor. I am using this in an attempt to refresh his recollection.

THE COURT: Ask him about the particular subject matter.

MR. WILLIAM CAHN: Yes, I am trying.

Q Was there any discussion on your part about the submission of vouchers?

A I said that you could submit vouchers as you ordinarily would havein the past and the informants would be paid.

Your objection again was that you were concerned about the confidentiality.

Q Was an alternative method discussed?

A I am not sure you indicated that you might get the funds from another source. You may have mentioned that, but no method, no specific method was discussed.

Q To your recollection?

A To my recollection.

Q What was your answer, if any, or if you remember, about the suggestion of getting money from another source?

A I think my feeling was if County monies were not involved, I was not concerned about where you got them from and I didn't care what you did with them, frankly.

Q Wasn't your words, it's your money?

A To that extent, I believe.

Q And did you during the course of this conversation make any reference or possible situation if done, keeping a record of some kind as to the payments?

A I may have. I am not sure. I think I may have, but I am not sure about that.

Q Now, was the term dual reimbursement ever used during that conversation?

A No, no, sir.

Q Was the term double -- double billing ever used?

A No.

Q During that conversation?

A No, sir.

Q By the way, how long did this conversation last, Mr. Roncallo?

A Probably no more than fifteen minutes, to my recollection.

Q And could you tell the Court and jury whether this conversation was important to you?

A Not really.

Q Now, you knew -- Did you know my connections with other organizations, other professional organizations at that time?

A I don't know if you were president of the District Attorneys' Association or not at that time, but I knew you were active in your own circles, of course.

Q And do you remember any specific discussion about the money coming from there?

A I don't think so, Mr. Cahn. I don't recall.

Q You don't recall.

I just show you this and ask if this refreshes your recollection, if it does?

A I think that my discussion -- and it was not -- I recall the discussion with the reporter. I don't know if we discussed the expenses from the District Attorneys' Association or whether we were discussing honorariums. and I thought I had indicated that to him. It doesn't mention that

here.

MR. DRUKER: I think the question was --

THE COURT: The question is whether this refreshes your recollection as to whether the source of the dollars was discussed.

THE WITNESS: I'm not sure, I'm not sure.

Q Now, as Comptroller of the County of Nassau and -- Mr. Roncallo, you had charge of the auditing of claim forms fromevery department within the County of Nassau, did you not?

A That's right.

Q And as I understand it it was your function to determine the -- pursuant to certification, the actual and necessary expenses?

A that's right, sir.

Q And now, you are an attorney?

A Yes, I am.

Q And did you make inquiry and did you do research to determine whther the billing of expenses to Nassau County and the billing of the same expenses to another organization was in any way prohibited by County Charter, County statute, State law or State statute?

MR. DRUKER: I will object on the ground that the County is not alleged to be a victim in the indictment, so it's totally irrelevant.

THE COURT: I will let him answer it.

THE WITNESS: I'm sorry --

THE COURT: He asked you whether you did any research on the subject.

THE WITNESS: I certainly didn't while I was County Comptroller. The occasion didn't arise.

I proposed a question subsequent to that, as a matter of fact, rather recently.

Q To whom?

A to the county attorney.

Q And do you know of any such county statute, county law, State stature or State law which specifically prohibits the filing of expenses with the County of Nassau and the filing of the expenses with another organization?

MR. DRUKER: I object.

THE COURT: I don't know if the question has any relevance to the issue, but I will let the witness answer.

MR. DRUKER: Are we talking about now or back then?

THE COURT: At any time.

MR. WILLIAM CAHN: Back then and now.

MR. DRUKER: I object to what any statute might be or might not be now.

Q All right, back then.

A I did not know of any statutory prohibition, no.

MR. CAHN: No further questions.

(continued next page)

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CROSS-EXAMINATION

BY MR. DRUKER:

Q Mr. Roncallo, did Mr. Cahn at any time back in 1970, '71, '72, '73, ask your permission to bill Nassau County and outside entities for the same travel expenses?

A No, sir.

Q At any time from 1970 to 1973 or 1974, did he tell you that he was billing Nassau County and other outside entitles for the same travel expenses?

A After that conversation I never heard anything more about the subject, sir. That was the end.

Q Now, isn't it a fact that your conversation with Mr. Cahn back in January of 1970 was, if anything, in hypothetical term. on his part?

A I think that -- I think that that's a proper statement.

Q And did Mr. Cahn ask you hypothetically if it were possible to obtain funds from the County to pay an informant without submitting claims?

A He asked me if he could pay an informer without submitting claims to our -- by not going through the usual process.

Q And did you tell him that this could not be done?

A Yes, sir.

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Q Did you also tell him however that he could submit claims to the County for informant payments without disclosing the informant's name?

A I think he knew that.

Q And that he wouldn't have to attach any supporting documents which might reveal the informant's identity?

MR. WILLIAM CAHN: I think the witness answered the question that I knew that.

MR. DRUKER: This is a different question. The first question was about his name and now I'm asking about supporting documents.

THE COURT: The first question was whether he told Mr. Cahn and he said Mr. Cahn knew.

Now, is your next question did he tell or did he know?

MR. DRUKER: It is related to different matters, your Honor.

THE COURT: Go ahead.

Q Whether or not you told Mr. Cahn he could submit claims for informant payments without any supporting documents?

A It was SOP, sir; so I think he knew that, too.

Q Standard operating procedure?

A Yes, standard operating procedure.

Q In fact, he submitted numerous claims and did so over the years for informants without any attached documents?

A I don't know how many, but he had done so in the past, yes, sir.

Q And these claims in the ordinary course of business didn't reveal the names of the informants, did they?

A No. Usually it was a code name.

Q And they didn't reveal the place at which the informant was paid, did they?

A I don't think they did. I'm not sure. I don't think they did.

Q Now, Mr. Cahn asked you hypothetically what your position would be if he were to obtain funds from some other source other than the County to pay an informant. Is that correct?

A He asked me today, you mean?

Q No. He asked you back then, January of 1970, something to the effect, "Do you care if I get funds from an outside source," and you said they could pay?

A I indicated it was no concern of mine.

Q You didn't care?

A He didn't have to account to me.

Q If he had a rich aunt in Indianapolis and she

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gave him $5,000 to pay for an informant, you didn't care?

A It was his business.

Q If the National Association of District Attorneys gave him $10,000 to pay for an informant, you didn't care?

A I was not concerned about it. I was concerned about counting monies.

Q He never mentioned in that conversation the National District Attorneys Association, did he?

A I'm not sure; I'm not sure.

Q I show you this document, Mr. Roncallo, and ask you if this refreshes your recollection, referring to the -- just read it to yourself. I think the fifth and sixth lines from the bottom. See if that refreshes your recollection as to whether or not Mr. Cahn said anything about the National District Attorneys Association.

(The witness peruses the document.)

A I don't think he did.

Q Now, from 1974 or whenever this matter became public, did you have any idea that Mr. Cahn was seeking dual reimbursement from both Nassau County and other entities for his travel expenses?

MR. WILLIAM CAHN: I will object to the question and the use of the terms.

THE COURT: You mean the term dual reimbursement?

MR. WILLIAM CAHN: Yes, sir.

THE COURT: Overruled.

Q Did you have any idea he was doing anything like that?

A No, sir.

Q Now, Mr. Roncallo, do you recall Mr. Cahn coming to you late in the year 1974 about this matter?

A '74?

Q Yes, sir. Or early 1975, with an affidavit. Do you recall that? Do you recall Mr. Cahn more specifically --

A No, sir, I don't.

Q -- showing you an affidavit roughly seven months ago and asking you to sign it in conjunction with this case?

A I think so; now, yes, sir.

THE COURT: That's a different date.

MR. DRUKER: All right.

Q When was this, Mr. Roncallo?

A I guess that was late in 1975.

Q All right.

Late in '75, I'm sorry.

He came to you with some sort of affidavit, didn't he?

A Yes, sir.

Q And do you recall what that affidavit said in essence?

A I remember reading it and I honestly don't remember what it said. My attorney had it. I don't recall.

Q Isn't it a fact that that affidavit stated matters which you knew not to be true, the affidavit that Mr. Cahn asked you to sign?

A Probably stated matters which I didn' t have within my recollection. I don't know whether they were true or not.

Q And did you refuse to sign the affidavit?

A I did not sign the affidavit.

Q You turned it over to your attorney, right?

A Correct, sir.

Q Do you know what happened to the affidavit after that?

A I don't know where it is.

Q Now, didn't the affidavit ask you or wasn't it ready or prepared for your signature, Mr. Roncallo?

A It was prepared for my signature.

Q And did it state in it that back in January of 1970 Mr. Cahn had come to you with a proposal involving billing Nassau County and outside entities for his travel

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expenses to pay an informant and that you approved it? Was that the substance of what was in the affidavit?

A I saw that affidavit maybe twice and I haven't seen it since perhaps several months ago and I really --

Q Try to remember as best as you can.

Wasn't that what was in the affidavit in substance?

A Would you repeat that, please?

Q Something to the effect that back in January of 1970 or thereabouts Mr. Cahn came to you with a proposal about billing Nassau County and outside entities for the same travel expenses and using the monies or half the monies to pay an informant, and furthermore, you approved this after he outlined this to you. Was that in substance what was in the affidavitp

A I think so, that's right.

Q And that wasn't true, was it, Mr. Roncallo?

A No. It didn't have my approval. We never discussed direct plans.

Q And did Mr. Cahn tell you, "Look, I'm in a jam, Angie, would you help me out," or something like that, something to that effect?

A I don't think he expected me to lie for him.

I would have to say in truth that perhaps he

remembered the conversation one way and I remembered it another way. I didn't sign the affidavit though, because I don't recall that the facts that were therein were as they were described.

Q It didn't accord with events as you remembered them. Is that right?

A That's right.

Q Now, Mr. Roncallo, I will show you a group of documents marked as Government's 56 for identification and I will ask if you can recognize those and identify those as being business records of the Nassau County Comptroller's office received and kept and maintained as such by you or under your car, custody and control during the period of time that you were the controller.

(Documents referred to handed to the witness.)

A Yes, sir.

Q And what are they, Mr. Roncallo?

A These are claims for monies paid to an informant.

Q To different informants. Is that right?

A Yes.

Q And submitted by whom?

A In some cases -- well, submitted by his office.

Q The District Attorney's office. Is that right?

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A The District Attorney's office.

Q And approved by the District Attorney himself. Is that right?

A Yes, sir.

Q Now, do any of those claims give the name of the informant to whom payment was made?

A No, sir.

Q Do any of those claims tell the place in which the informant was paid?

A No, sir.

Q And taking a look at those claims, do they give the date of actual payment to the information or do they simply give a date on which a check was drawn to an assistant district attorney?

A They do not give the date.

Q Those claims are in proper form as far as you were concerned?

A Yes, sir.

Q And they were received by your office?

A Yes.

Q Audited by your office?

A Yes, sir.

Q And paid, right?

A Yes, sir.

MR. DRUKER: I have them in evidence, your Honor.

THE COURT: Come to the side bar a minute, please.

(The following takes place at side bar out of the hearing of the jury.)

THE COURT: I called the sidebar for a different purpose. I set a pretrial for 12:45 thinking I can shorten the session a little bit. I don't know if you will be long enough on Roncallo or whether I should have him come back.

MR. DRUKER: I think maybe we should continue after lunch because I assume there will be redirect in any event.

THE COURT: Not too much, unless there is more.

MR. DRUKER: May I have one moment, your Honor?

THE COURT: Yes.

Do you have any objection to these exhibits going in?

MR. WILLIAM CAHN: No.

MR. DRUKER: I will be brief, your Honor.

(The following takes place in open court and in the presence of the jury.)

thought I had indicated that to him. It doesn't mention that

BY MR. DRUKER:

Q And, Mr. Roncallo, looking at the first document and the next-to-the-last document, I believe those statements ranged in amounts up to $1,000; isn't that right?

A Yes, sir.

Q And you didn't look behind those claims, did you, and ask if the informants -- withdrawn.

You accepted the District Attorney's certification on there as correct. Is that right?

A Yes, sir.

Q And if he had put down there $2,000 on the claim for an informant payment, you would have paid him $2,000, right?

A Yes, sir.

Q And you wouldn't have asked the informant's name, right?

A No, sir.

Q Or where he was paid?

A No, sir.

Q Or the date on which he was paid, right?

A No, sir.

Q And finally, Mr. Roncallo, did you at any time authorize or give Mr. Cahn permission to make statements to various organizations on claims or to make false statements,

I should say, to any outside organization on travel expense claims that he was submitting to them?

MR. WILLIAM CAHN: Objection.

THE COURT: Overruled.

A I had no authority to do that.

MR. DRUKER: No further questions.

Thank you.

THE COURT: You can have redirect.

REDIRECT EXAMINATION

BY MR. WILLIAM CAHN:

Q Mr. Roncallo, if I had a rich aunt who was going to pay an informant, I wouldn't have to talk to you about it, would I?

A I guess not.

Q It would be none of your business?

A No.

Q I wouldn't call you to my office and ask you, can I have a rich aunt pay my informant, would I?

A No.

Q And now this business of the affidavit, Mr. Roncallo, wasn't that at the time I was preparing my case for trial?

A Yes, sir, I believe it was; yes, sir.

Q And didn't I ask you to go down -- by the way,

your attorney is just below me?

A In the same building as yours.

Q Didn't I ask you to let's go down and see Irv and talking about this affidavit?

A Yes, sir.

Q And wasn't the substance of the conversation, "Bill, this is not exactly in accordance with my recollection of the events"?

A That's what I testified to, yes.

Q And didn't I say to you, "Ang, then don't sign it"?

A Yes, sir.

Q And don't we still have a difference as to the exact substance of the conversation even today?

MR. DRUKER: Your Honor, I think it might be better if the witness testifies rather than the questioner.

THE COURT: We don't have any testimony as to the defendant's recollection at this time and, therefore, I will overrule -- I will sustain the objection and exclude the question.

Q Was there any time from 1970 to this particular date that I ever asked you directly, indirectly or suggested to you directly or indirectly to lie for me?

A No, sir.

Q W hen was the first time, M:. Roncallo, since the last hearing that I have seen you and discussed in any way this particular matter?

A Half hour ago.

MR. WILLIAM CAHN: That's all.

THE COURT: Anything further?

MR. DRUKER: No, your Honor.

THE COURT: All right.

Thank you, Mr. Roncallo. You are excused.

THE WITNESS: Thank you, Judge. Nice to see you.

(The witness was excused.)

THE COURT: Ladies and gentlemen, we will take a recess now until 2:15. I have some two o'clock matters. I want the court reporter back.

Don't talk about the case among yourselves or anyone else and don't talk to any people in the courtroom.

Thank you.

(The jury leaves the courtroom.)

(Luncheon recess.)

AFTERNOON SESSION (2:00 p.m.)

(The following took place in the absence of the jury):

THE COURT: Mr. Bogin, since I told the jury to return at 2:15, I think I will wait until 2:15 and then excuse them.

MR. BOGIN: Very well.

THE COURT: I understand Mr. Cahn is sick.

MR. BOGIN: I merely wanted your Honor to understand Mr. Cahn, as much as he would like to go on this afternoon, he is in even greater pain than he had been earlier today. And I ask your Honor's indulgence.

THE COURT: You believe he will be all right on Monday?

MR. BOGIN: I am reasonably sure he will be. We are concerned about it, but there is nothing that we know of that is permanently disabling except that he is definitely in substantial pain.

THE COURT: All right.

MR. BOGIN: Thank you very much.

THE COURT: Wait here until I excuse the jury. Call the afternoon calendar.

MR. DRUKER: Does this mean we will return at 2:15?

THE COURT: Yes.

MR. DRUKER: Thank you.

(Recess taken.)

(Continued on next page.)

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(The jury enters the courtroom and the follows take place in open court and in the presence of the jury.)

THE COURT: I will ask you to be seated for just a few minutes.

It has been pointed out to me that Mr. Cahn was in some pain this morning and he has not found any relief during the lunch hour.

Although there might be another ready, I have decided to adjourn the matter until Monday morning.

I am sorry we can't use all of your time, but I am glad it is not a juror that is sick; but I am not glad that it's Mr. Cahn who is sick. I just remind you of the same rules you have heard before. You don't talk about the case among yourself or anyone else. You don't read any newspaper items or watch or listen to anything that may be in the radio or television and you don't talk to any of the people in the courtroom if you happen to see them.

And I will have my Monday morning calendar, so we will start at 10:15 on Monday morning.

Please be back here then.

(Case on trial adjourned until May 10, 1976.

* * *

I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Vernon Hoy	3	17	28	
Luis Carisquillo		37	41	46

EXHIBITS

GOVERNMENT'S	DESCRIPTION	FOR IDENT.	IN EVID.
65	Document		11
DEFENDANT'S			
E and F	Documents	37	
G	Document	40	

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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
MAY 21 1976
TIME A.M.
P.M.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645

WILLIAM CAHN, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

May 10, 1976
10:30 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate stenographic transcription of my notes.

Official Court Reporter
U.S. District Court for the
Eastern District of N.Y.

SHELDON SILVERMAN
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
-and-
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

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MR. CAHN: After Mr. Spinnato's testimony on the People's case, I requested and the Court was kind enough to grant the request that Mr. Spinnato be here Monday, May 10th. I'm certain it's a result of a misunderstanding, but in any event, we learned that Mr. Spinnato is not here today --

MR. DRUKER: He'll be here within an hour.

MR. CAHN: That's all. Thank you.

THE COURT: I hope you're feeling all right to continue, Mr. Cahn.

MR. CAHN: I'm here. I'm not well, but I'm here.

THE COURT: Is your next witness ready?

MR. CAHN: Yes sir.

MR. NEIL CAHN: Your Honor asked for memorandums this morning.

THE COURT: Yes. I'll cover that later on. Let's bring in the jury.

THE LAW CLERK: We're missing one alternate, Judge.

THE COURT: Let's find out whether he's on the way.

THE CLERK: She checked in this morning, Judge, with the people downstairs. I don't know where she is.

THE COURT: Mr. Cahn, can you give me any idea how long your case will take?

MR. CAHN: It is entirely within the realm of possibility that we will go into next week, your Honor, very probably.

THE COURT: Then the Government may, perhaps, have some rebuttal.

MR. DRUKER: No more than a day, your Honor, probably less.

THE COURT: The last juror is on her way.

THE CLERK: She's on her way up, your Honor.

MR. CAHN: Might I be excused for a moment?

THE COURT: All right.

THE LAW CLERK: Judge, the last alternate arrived.

THE COURT: Bring them in.

(Jury enters Courtroom.)

THE COURT: Good morning, ladies and gentlemen. Everybody is here now and reasonably well. We're ready to proceed.

Mr. Cahn, call your next witness.

MR. CAHN: Assistant Chief Inspector Charles Spahr.

(Continued next page.)

CHARLES SPAHR, a witness called on behalf of the defendant, was duly sworn by the Clerk of the Court, and testified as follows:

THE CLERK: Full name?

THE WITNESS: Charles Spahr.

DIRECT EXAMINATION

BY MR. CAHN:

Q Chief Spahr, you are a member of the Nassau County Police Department?

A Yes, I am.

Q Would you tell the Court and jury, if you will, please, how long have you been a member of the Nassau County Police Department?

A Since 1946.

Q What is your present position?

A I'm an Assistant Chief Inspector. I am second in command of the Detective Division of the Police Department.

Q Were you a member of the Nassau County Police Department in January of 1970?

A Yes, I was.

Q Do you remember your rank in that year?

A I was a Deputy Chief Inspector in that year.

Q What were your duties at that time, Chief Spahr?

A I was commanding officer of the Organized Crime

Unit which consisted of the Intelligence Bureau of the Police Department, the Narcotics Bureau and the District Attorney's Racket Squads.

Q As such, were you the liaison officer between the District Attorney's office and the Nassau County Police Department?

A Yes sir, that was one of my duties.

Chief Spahr, is the Nassau County Police Department under the control of the District Attorney of Nassau County?

A No, it is not.

Q Who is the chief executive officer of the police department?

A The Commissioner of Police.

Q Chief, do you know the defendant, William Cahn?

A Yes, I do.

Q How long have you known him?

A I would say approximately twenty years.

Q How do you know him?

A By working with him over the twenty years.

Q In what capacity?

A As the District Attorney of Nassau County.

Q Did you also know the defendant as an Assistant District Attorney?

various organizations on claims or to make false statements,

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A Yes, I did.

Q During that period of time did you and the defendant, William Cahn, become social friends?

A To a degree, perhaps.

Q But friends?

A Friends, yes.

MR. NEIL CAHN: Your Honor, may we approach the side bar?

THE COURT: All right.

(Side bar.)

MR. NEIL CAHN: I hate to press this, but, again, Chief Spahr was questioned quite extensively by Nick Tsotsos who was in the Courtroom.

MR. DRUKER: I think this one is frivolous, your Honor. I'm aware of Chief Spahr's testimony at the last trial and the Grand Jury. Again, I can't conceive of Mr. Tsotsos being a witness in the case, let along a witness in any matter contradicting anything of what Chief Spahr says. I submit this is frivolous.

THE COURT: I don't think it's frivolous. Do you need Mr. Tsotsos with you?

MR. DRUKER: Not present in the Courtroom for this witness, but, again, your Honor, it's just a

situation inconceivable to me how his testimony could contradict anything that Mr. Spahr might testify to. I'm not sure -- Agent Tsotsos wasn't with us when we interviewed Chief Spahr. Mr. Goldman was with us.

THE COURT: He may have talked to him.

MR. CAHN: He did, quite often.

MR. DRUKER: As happens with case agents. The principal interview of Chief Spahr was taken by Mr. Goldman and myself without Mr. Tsotsos present.

THE COURT: I don't think there's a problem. Let him sit outside.

MR. GOLDMAN: I want to bring to the attention of the Court: Mr. Cahn subpoenaed some witnesses from the Nassau County District Attorney's office.

MR. DRUKER: Mr. Dillon's secretary.

MR. GOLDMAN: One or two other people. They walked into Court and I brought them out. I didn't know whether they should be in Court. They're ready to testify.

(In open Court.)

BY MR. CAHN:

Q Chief Spahr, did there come a time in January of 1970 when you saw an individual who later became known to you as Sam Houston?

A Yes, there did.

Q Would you tell the Court and jury how that came about?

A Yes, sir, I was in your office at that particular time, the reason for my being there I don't recall.

Q What particular time, Chief Spahr?

A I'm talking about January of 1970, mid-January, if I recall correctly.

While I was there you received a telephone call and I was seated in your office. I heard that part of the conversation that you were repeating over the telephone. When you completed that conversation you told me that there will be a call from an individual who was offering to be an informant for you personally and who wanted to meet you then and there to discuss the possibility of becoming such an informant and he wanted to meet you alone. You said to me it sounded good to you and that you were going to meet with him.

Q Where?

A At a shopping center in Roosevelt Field a few miles from your office.

Q What did you say to me, if anything?

A I advised against it. I told you that I did not think that it was a good idea for you to meet with anybody

alone considering the fact that there had been many death threats on your life. Protection had been provided for you in the past and for members of your family. I suggested that you either assign somebody else from your office or at least have somebody else from your office go with you.

You said you wouldn't do that. I suggested that I go along with you. You didn't want me with you; however, we agreed that I would follow you in a different car.

Q Did you do that.

A Yes, with the stipulation that I didn't interfere with your meeting at the Field.

MR. DRUKER: If I might, I'll just make this objection one time. I object to this line of testimony, but assuming my objection is overruled, at least in part, I would ask the jury be instructed with regard to counts 1 and 10 of the indictment, what bearing this has on it.

THE COURT: I'm going to come to the distinction between the several counts when it comes to the charge. I think you're referring to Counts 1 through 10.

MR. DRUKER: Yes.

THE COURT: Which are based on fraudulent -- false statements and to which this may not be as much of a defense, if any, as it would be as within my

instructions on the scheme to defraud, the mail fraud part of it.

MR. DRUKER: My continuing objection to the Sam Houston testimony be noted.

THE COURT: Yes.

MR. CAHN: Might I have the last question, sir?

THE COURT: A lot of this testimony has not been in response to the last question.

MR. CAHN: This is part of the conversation, your Honor.

BY MR. CAHN:

Q Did you follow me?

A Yes, I did.

Q Tell the Court and the jury, if you will, please, just what took place?

A I saw you drive into the parking area of the shopping center, park your automobile and get out and stand alongside of your car.

Q Chief Spahr, was this the District Attorney's car that I went in?

A It was not the car that you normally rode in, was a standard four-door sedan. I don't recall any more about the car than that.

Q It wasn't the limousine?

A No sir.

Q I didn't have the driver with me?

A No sir.

Q What took place?

A You parked your car, stood alongside it for a while. A few moments later you were approached by a man. You had a conversation with this individual for about, I would say, fifteen minutes or a half hour. He left. You drove away. I left my car which was parked a considerable distance from where you were, followed this man on foot. He entered the shopping center and that was the last I saw of him at that time.

Q Could you describe Sam Houston, please?

A Yes, sir. He was male, white, about fifty years old. He was 5-8 or 5-9, medium build, dark hair.

Q What happened after that?

A I returned to your office. You were already there when I got back. I asked what had happened. You told me you had a conversation that he was offering to be an informant for you --

MR. DRUKER: I object to this.

THE COURT: Yes, I don't think the defendant's statements become admissible in any way. Do they?

MR. CAHN: Pardon, sir?

THE COURT: How do the defendant's statements become admissible during this way?

MR. CAHN: Part of the res gestae of the entire matter, your Honor.

THE COURT: Come to side bar.

(Side bar.)

MR. BOGEN: I suggest to your Honor this testimony is not very much different, a good deal of other hearsay admitted on the Government's case. Moreover, it is part of the res gestae in the sense of establishing the defendant's state of mind and evidencing the supporting background of the continuing relationship with Sam Houston.

Under these circumstances, I think it's vital and highly probative value that the conversation between Chief Spahr, the present witness, and the defendant be admitted as laying the foundation for further communications and further testimony regarding this very item.

MR. DRUKER: What are you saying? The Government's case, Mr. Bogen, is referring to -

MR. BOGEN: Don't tax me with that, please.

MR. DRUKER: I can't recall any period I submit now we're getting into an area of not only what

are we in with, I contend, is irrelevant defense, but self-serving statements of the defendant regarding this irrelevant defense through a witness who is not a participant in the conversation in order to hear it. It's not only hearsay, but self-serving.

MR. CAHN: Your Honor, this entire case --

MR. DRUKER: Moreover, it's not for the truth or falsity of what was said; rather than for its value --

MR. CAHN: The entire case is relative insofar as the state of mind of the defendant is concerned and conversations and what took place seems to me to be an extremely important part of the entire procedure, to leave portions out would leave a void that would be totally ludicrous.

THE COURT: If you're not going to take the stand it certainly isn't admissible.

MR. BOGEN: He will take the stand.

MR. CAHN: I will assure your Honor that's going to happen.

THE COURT: You weren't so sure last week.

MR. CAHN: Oh, no.

MR. BOGEN: I don't know if we made that impression.

MR. CAHN: If I ever gave you that impression, I have every intention of taking the stand.

THE COURT: You objected to the testimony of the ground that it might force you to take the stand.

MR. CAHN: For the purposes of the legal argument on Counts 1 and 2.

MR. BOGEN: The defendant has a right to submit to your Honor that his constitutional right not to take the stand might have been jeopardized by the ruling that your Honor proposed, but that does not infer that he will not take the stand. That was merely a technical position as to the testimony in that matter.

I repeat, the proposal now, the offer of proof now is in fact part of the res gestae. It is critical --

THE COURT: It's just an old-fashioned word which does not bring hearsay into a case.

MR. BOGEN: I won't dispute your Honor's view on that score. The probative value of the testimony so far as it relates to the key of the defendant case is of such significance that I really believe the rules do offer opportunity for the admission of this testimony.

THE COURT: I suppose if the defendant takes the stand and his testimony is attacked as recent fabrication, this would come back in for rebuttal testimony. For that reason I think I'll receive it.

(Open Court.)

THE COURT: Ladies and gentlemen, we just had a discussion at the side bar. What Mr. Spahr states as to Mr. Cahn's conversations to him back in 1970 is hearsay, but it's being offered, as I understand, not for the truth of what was said, but as bearing on Mr. Cahn's knowledge and state of mind of intent and subject to further rulings I'm going to permit Mr. Cahn to continue.

MR. CAHN: With that, may I ask that the last question be repeated?

(Last question read back.)

BY MR. CAHN:

Q Would you continue, Chief Spahr?

A Yes sir.

You told me that you had a conversation with this man and that he was offering to be an informant for you; that you felt that he would be a good informant and, apparently, he had things to tell you that would be of value.

I recall asking what his motivation was, what

his -- you know, what was he looking for. You told me that it was apparently, of revenge against someone, although I don't recall your saying who and that he also wanted to be paid.

Q Any other conversation at that time?

A I'm sure there was more conversation, Mr. Cahn. I can't recall specifically what it was.

Q Was there any conversation about me meeting the defendant -- this Sam Houston alone?

A Yes sir.

Q Would you tell the Court and jury what you said about that?

A Well, you told me that he had been very insistent upon meeting with you and only with you and, again, I advised against it. I didn't feel that it was a good idea. I feel that it could be a mistake and it might put you in jeopardy.

Q Did there come a time, Chief Spahr -- I"ll withdraw that.

Did there come a time, Chief Spahr, when you saw Sam Houston again?

A Yes, there did.

Q How many times thereafter, approximately, to the best of your recollection did you see Sam Houston?

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A Over a period of about five years I saw him, I would say, somewhere, ten, eleven, twelve times. I'm approximating, Mr. Cahn.

Q On the occasions that you saw Sam Houston, was the defendant, William Cahn, with you?

A Yes sir.

Q Where did you see Sam Houston with the defendant?

A I saw him in Atlanta, Georgia. I saw him in Reno, Las Vegas; San Francisco. That's -- Miami. That's what I can recall.

(Continued next page.)

S:jd
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Q. Where, specifically, in those cities did you see Sam Houston?

A. In most cases

Q. When you saw the defendant William Cahn with Sam Houston,did you ever see the defendant William Cahn give Sam Houston money?

A. Yes, I did.

Q. Large sums of money?

A. Yes.

Q. Do you know how much?

A. Yes, I do.

Q. How did you know that?

A. I saw him count it out.

Q. Won't you tell the Court if you will please, the procedure that took place.

A. It wasn't any formal procedure. What happened was that he would be in your room. You would be having a conversation with the informant and at some point during that conversation you would pay him a sum of money. You would take the money out of your pocket or your wallet or whatever, and you would count it out and you would hand it to the informant.

Q. On these cases when you met Sam Houston with the defendant, William Cahn, what happened when you returned back to Mineola?

A. I would drive over to your office. I would find an affidavit that had been prepared relative to my witnessing that payment. I would sign that affidavit.

Mr. CAHN: I ask these be marked for identification as one exhibit (indicating)

THE CLERK: Set of documents marked Defendant's Exhibit H for identification

(So marked)

Q. I show you Defendant's Exhibit H for identification (handing) Chief Spahr, and ask you if you recognize those?

A. Yes, I do.

Q. What are they?

A. They are copies of the affidavits that I signed at your office at various times after having been present with you and the informant.

Q. Were they signed on or about the dates noted on the copies?

A. Yes, on or about, yes.

Q. Chief Spahr, do you know from your own recollection or can you remember the time, place and amounts when you saw the defendant give Sam Houston money?

A. Not independently, but I can refer to these a affidavits.

Q. Would they refresh your recollection?

A. Yes, sir, they would.

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Mr. Spahr-direct

Q. May I ask you to refresh your recollection and tell the Court and Jury when and where and how much you saw the defendant, William Cahn, give to Sam Houston?

A. Yes. on the 11th day of May, 1971, in Atlanta, Georgia, Mr. Cahn gave the sum of One Thousand Dollars to the informant, Sam Houston.

On the 20th day of June, 1971, in Reno, Nevada, Mr. Cahn gave the informant One Thousand Dollars.

On the 5th day of August, 1971, in Reno, Mr. Cahn gave the informant One Thousand Dollars.

On the 7th day of April, 1971, in Reno, Mr. Cahn gave the informant Seven Hundred and Fifty Dollars.

On the 28th day of July, 1973, in Las Vegas, Mr. Cahn gave the informant Seven Hundred and Fifty Dollars.

On the 12th day of September in 1971, in Houston, Texas, Mr. Cahn gave the informant Seven Hundred and Fifty Dollars.

On the 25th day of February, 1974, in San Francisco, Mr. Cahn gave the informant Seven Hundred and Fifty Dollars.

On the 6th day of May in 1974, Mr. Cahn gave the informant Five Hundred Dollars.

Q. Chief Spahr, did you ever see the defendant, William Cahn, give Sam Houston other monies?

A. Yes, I did.

Q. How did that come about?

A. During these conversations, the informant would ask for additional money. When I say "additional money" I am not talking about large sums of money. I'm talking perhaps, Forty, Sixty, Eighty Dollars, something like that, a number of Twenty Dollar bills. I can recall on at least two occasions that happening.

May I say I did not sign any affidavit relative to those payments.

Q. Was there on occasions, Chief Spahr, when you were with the defendant, William Cahn, and saw Sam Houston when no large sums of money were given to him?

A. Yes.

Q. Do you remember when and where?

A. I remember one time in Miami, in June of 1974. There can be others that I simply cannot recall right now.

Q. May I suggest Reno.

A. Yes.

Q. Chief Spahr, you told us that you saw Sam Houston in the defendant's, Mr. Cahn, room, at all times.

A. Most of the times, yes.

Q. Was there an occasion when you saw him somewhere else?

A. Yes, there was.

Q. Won't you tell the Court and Jury, please.

A. There were two occasions, the first one being the meeting in Roosevelt Field, the second one being an incident in San Francisco and I believe it was in February, 1974. We had expected the informant to arrive at your hotel and the hour grew late and we assumed that he wasn't - -

Mr. DRUKER: I object to this. Ask the witness to answere the question rather than talk about assumptions and hear-say.

THE COURT: When you get into what you assume, which is other than what the party requested.

THE WITNESS: I saw him on the street in San Francisco.

Q. How did that come about?

A. In February, 1974.

Q. How did that come about?

A. I was taking a walk at a particular hour, some where around mid-night. I saw a car parked on the opposite side of the street from me. I saw theinformant get out of thec car, get from behind the wheel. He closed the door and he walked down the street, passing me on the opposite side of the street. I have no reason to believe he saw me.

I did recognize him.

I approached the vehicle on the passenger's side, having crossed the street. I opened the door of the car, the right hand door was not locked. I looked through the car. I looked over the visor and on the seats and I looked into the glove compartment. In the glove compartment I found a few articles, among which was a piece of paper I believe to be a rental agreement. As I was about to examine it, I would say, I looked up and saw a man standing accross the street from me, watching me. I believe that man to be an associate - -

(Continued on next page)

MR. DRUKER: I am going to object to this.

THE COURT: Yes.

You saw a man?

THE WITNESS: I saw a man standing across the street watching me. At that time, I replaced the items I had in my hand into the glove compartment of the car, closed the door, walked back to the hotel and joined you in the room. I found the informant there, and after the informant left, I explained to you what I had done.

Q Did you see anything on this piece of paper or car rental that you say you saw?

A Yes.

Q Did you see a name?

A Yes, I did.

Q What was the name you saw?

A Nick, Nicholas Gentile.

Q You told the defendant about this?

A Yes, I did.

Q Was there a conversation about it?

A Yes, there was.

Q Would you tell the Court and jury that conversation?

A You were upset because I had violated a promise

to you.

MR. DRUKER: I object to the characterization. He asked what the conversation was.

THE COURT: You have probably been a witness enough times to know that you should try to answer the questions directly. Try to say what was said.

A You said to me I should not have done this, that I could jeopardize the relationship that existed between you and the informant.

Q Did you thereafter make an investigation, immediately thereafter, an investigation as to Nick Gentile when you returned to Mineola?

A I inspected certain files that were maintained in my department without any success.

Q Did you give anybody any orders with reference to that?

A No, sir.

Q Did there come a time when you caused a composite picture of Sam Houston to be made?

A There did.

Q Who helped in reference to making that composite picture?

A You helped and Mr. Spinato helped.

MR. CAHN: I ask this be marked for identification.

THE CLERK: Photograph marked Defendant's Exhibit I for Identification.

(So marked.)

Q I show you Defendant's Exhibit I for Identification, Chief Spahr, and I ask you if you know what that is?

A Yes, sir, this is a photograph of the artist's sketch that was drawn as a result of my conversation with the artist and my subsequent conversations with you and Mr. Spinnato.

Q Is that a fair likeness of Sam Houston?

A Yes, it is.

MR. CAHN: I offer it in evidence.

MR. DRUKER: I don't see any relevance, I object.

THE COURT: Sustained.

Q Now, when you traveled with the defendant William Cahn did you do so on orders of your superiors?

A Yes, sir, I did.

Q Were those written orders?

A Yes.

Q Chief Spahr, did there come a time when you traveled to New Orleans, Louisiana to see Sam Houston?

A Yes.

Q At that time, did you make a request from the Police Department to make such a trip?

A I made a request to the Commissioner of Police to accompany you on that trip.

Q Could you tell us approximately what that date was?

A I may be able to refresh my recollection if I refer to these affidavits (indicating).

Q If you will.

(Pause.)

A It was in September 1973.

Q Did you tell the defendant Cahn that you made such a written request?

A No, sir, I didn't.

Q You didn't?

A No.

MR. CAHN: I ask this be marked for Identification.

THE CLERK: One-page document marked Defendant's Exhibit J for Identification.

(So marked for Identification.)

Q I show you Defendant's Exhibit J for Identification and ask you if you recognize that.

A Yes, sir, I do.

Q What is that?

A It's a request from me to the Chief of Detectives

indicating that you had requested I accompany you and members of your staff to New Orleans and Houston. The purpose of this request is to participate in an investigation and interview of an informant relative to gambling activities in Nassau County.

Q Had you ever told your supervisors about the existence of Sam Houston?

A Yes, sir, I have.

Q Who did you tell?

A Chief of Detectives and the Police Commissioner.

May I say this? I never used the name Sam Houston. I told my supervisor that I was accompanying you and there were occasions where we met with the informant and you were paying him money for information.

Q Now, was the time in reference to Defendant's Exhibit J the only time that you expressly requested through written permission to see the informant?

A Yes, sir.

Q Is there a reason for a change in your procedure?

A Yes, sir. At that particular time, there was no other reason for my going to Louisiana otherthan the fact you told me you were going to meet with the informant in Louisiana.

I had a purpose for going to Houston, Texas on that same trip, but not to New Orleans, except to meet this informant.

Q Is that request contrary to the request that the defendant William Cahn made?

A Yes.

MR. CAHN: I offer it in evidence.

MR. DRUKER: May I see it?

MR. CAHN: Yes, certainly.

(Pause.)

MR. DRUKER: Your Honor, may I have a brief voir dire on this?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DRUKER:

Q Chief Spahr, this request just says the purpose is to participate in an investigation and interview informants relative to gambling activities, that is plural?

A Yes.

Q It doesn't say anything about Sam Houston?

A No.

Q Or tell about a specific informant?

A No.

MR. DRUKER: I object to it on the grounds of relevancy and materiality.

THE COURT: I will receive it, considering the description that has been given by the witness.

THE CLERK: Defendant's Exhibit J marked in Evidence.

(So marked.)

MR. CAHN: May I show this to the jury, your Honor?

THE COURT: Yes.

(Pause while jury views exhibit.)

DIRECT EXAMINATION

BY MR. CAHN:

Q Now, did there come a time, Chief Spahr, in November of 1974 you heard from Sam Houston on the telephone?

A Yes, sir, there did.

Q As a result of that conversation, what did you do?

A I contacted you and told you that he had been calling me and he wanted to be in touch with you.

Q And did you have a conversation with me as to my whereabouts in November of 1974?

A Yes.

Q What was the conversation?

A You told me you would be in Chicago. I received a second call from the informant and I advised him you would be in Chicago.

I don't recall the hotel, I think you told me the

Ambassador, East or West, or something like that. I am not certain.

Q Sinc e that time, have you ever heard from the informant thereafter?

A No, sir, I have not.

MR. CAHN: I have no further questions.

THE COURT: You may go ahead, Mr. Druker.

MR. DRUKER: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. DRUKER:

Q Now, Chief Spahr, would you classify yourself as a good friend of the defendant William Cahn?

A Yes, sir, I would.

Q From time to time you socialized with him, have you not?

A Our relationship is primarily professional but there are times we did socialize.

Q You traveled with him a good deal?

A Yes.

Q Both within and outside the United States, is that correct?

A Yes.

Q Approximately how many trips did you take with Mr. Cahn pursuant to County business outside of New York State,

to the best of your recollection?

A I would not be able to pinpoint it, Mr. Druker, but 15, perhaps 20.

Q Perhaps more, right?

A Perhaps, but not very much, I would say.

Q Places like Zurich, Switzerland and Monte Carlo?

A Yes.

Q Las Vegas?

A Yes.

Q More than one time, right?

A I would imagine so.

Q Miami, Florida?

A Yes.

Q Reno, Nevada?

A Yes.

Q Lots of times?

A A number of times.

Q Houston, Texas?

A Yes, sir.

Q San Francisco, California?

A Yes.

Q A number of times, right?

A Yes.

Q New Orleans, Louisiana -- you already testified

about that, is that right?

A Yes.

Q Were you a liaison between the Police Department and the District Attorney's Office before Mr. Cahn became District Attorney?

A No, sir.

Q Since Mr. Cahn left office, have you gone to Zurich,Switzerland at all?

A Since he left office, no.

Q Monte Carlo?

A I have been to Monte Carlo, but not since he left office.

Q Reno, since he left office?

A Yes.

Q On County business?

A Yes.

Q How many times?

A Once.

Q How about Las Vegas?

A I don't believe so. I may have been, Mr.Druker, but I am not absolutely sure.

Q Was your testimony this travel was undertaken on the orders of your superiors?

A That is correct.

Q They came out and said, Chief Spahr, we want you to go to Monte Carlo or Las Vegas with Bill Cahn?

A They didn't say Monte Carlo. In most cases I have a written directive that I was to accompany Mr. Cahn on trips.

Q Was this written directive pursuant to a request by you to travel?

A No.

Q Was it pursuant to a request by Mr. Cahn of the Police Department?

A In most cases, yes.

Q You knew he was going to make the request in most cases?

A Sometimes I did, sometimes I did not.

Q This was ordinary procedure, right, that the District Attorney would go to the Police Department and say, I would like Chief Spahr to accompany me and -- Charles Spahr -- to accompany me on a trip?

A Or other officers.

Q And your supervisor would, as you put it, order you to travel with Mr. Cahn; is that right?

A That is correct.

Q Now, you were at least on one occasion -- withdrawn.

What was your title or position in the years 1969 to 1974, or did it change?

A It changed in 1969. I was Deputy Chief Inspector and my position was Commanding Officer of the Organized Crime Unit.

I believe it was in 1972 I became Assistant Chief Inspector and Second Deputy Chief of Detectives at that time.

Q This promotion in 1972, did Mr. Cahn help you with that?

A Absolutely not.

Q Not at all?

A Not at all.

Q Did he put a recommendation in for you?

A No, sir.

Q When you had traveled with Mr. Cahn, you ordinarily flew when you traveled outside of New York State?

A Yes.

Q Did you go tourist or first class?

A When with Mr. Cahn, first class.

Q How about when you traveled by yourself or with other officers?

A Normally, I would fly coach.

Q Why the difference? How come you fly first class with Mr. Cahn and coach when --

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A Mr. Cahn was flying first class. I was to accompany him. I couldn't accompany him if I'm in the coach section.

Q Now, when was it you saw -- withdrawn.

When was it you were in Mr. Cahn's office when he received a phone call from Sam Houston or somebody?

A Beginning of 1970.

Q Around January 1970, right?

A Yes.

Q He told you he didn't want you going along with him?

A That is correct.

Q Did this strike you as out of the ordinary that Mr. Cahn didn't want you to accompany him?

A Yes.

Q Wasn't he ordinarily accompanied by a Police Officer almost every place he went?

A No.

Q On business?

A Not necessarily a police officer but by an individual, yes. Not always.

Q He was in protective custody because of threats on his life and otherwise?

A He was frequently under protective surveillance.

Q Did this arouse your suspicion, that Mr. Cahn was vehement in not wanting you to accompany him?

MR. CAHN: I object to the word "vehement."

THE COURT: Rephrase the question.

MR. DRUKER: Yes, your Honor.

Q Did this arouse your suspicion?

A No, but it did cause concern.

Q Did you follow him?

A Yes.

Q Did you get a good look at the individual that he met with on that day?

A Yes, sir.

Q Where did he meet, was it out on the street, or in a car or house?

A In a parking lot.

Q Who was there first, Mr. Cahn or Sam Houston?

A Mr. Cahn. I saw Mr. Cahn first. I wouldn't have known Sam Houston until he approached Mr. Cahn.

Q Did he walk up or pull up by automobile?

A Walked up.

Q How far away were you?

A Perhaps 15, 20 car lengths down the end of a parking row.

Q Were you hidden or in the open?

A I was seated in my car.

Q Unmarked car?

A Yes.

Q Were you able to hear anything that they said?

A No, I was not.

(Continued on next page.)

Q Did you cover Mr. Cahn in subsequent meetings with Sam Houston prior to approximately a year later, May, 1971?

A Did I cover him?

Q Yes.

A No.

Q Did you go with him or did you meet Sam Houston prior to May 1971 or thereabouts?

A No, sir.

Q Now, with regard to the payments that you testified to, Mr. Cahn was physically counting this money out in your presence?

A Yes.

Q He would go"one hundred, two hundred, three hundred, four hundred, five hundred, whatever the amount was?

A Yes.

Q You witnessed it? You would witness it then?

A I would observe it then.

Q Then you would go home and fill out an affidavit?

A That is correct.

Q You testified that these affidavits, you signed them on or about the dates that are notated?

A Yes.

Q These were sworn statements?

A Yes.

Q Shouldn't these have been on the dates notated?

A Yes, should have been and may very well have been, but I have a recollection of there being one or two instances when may be they were off a week. At least, I recall one being off. Whether I asked it be changed or didn't, I don't recall. Generally, I am saying to you they were signed at approximately that time.

Q When did you first note this was off by a week or two, if they were?

A I first noted it at the time I signed it. Mr. Druker, let me say this, I am not sure they are, but at the time I was affixing my signature.

Q Mr. Cahn imparted to you very, very sensitive information in the course of your dealings with him, didn't he, relating to the cases?

A From time to time, yes.

Q Can you think of anything more sensitive than this Sam Houston business?

A (No response.)

Q Or was that very, very sensitive matter?

A It was sensitive as far as Mr. Cahn was concerned, yes.

Q Did Mr. Cahn tell you how he was generating the money to pay this Sam Houston at any time prior to 1974?

A No, sir, he did not.

Q Did he tell you that he was billing both Nassau County and outside entities to rais emoney to pay Sam Houston?

A No, sir, he did not.

Q Where did you think he was getting money from?

MR. CAHN: Objection.

THE COURT: Sustained.

Q Did you know the source of the monies that he was using to pay Sam Houston at any time in 1970 through 1974?

A No, sir.

Q Now, when Mr. Cahn would meet with Sam Houston, Sam, if I may, would impart information to him, would he not?

A Yes, sir.

Q Were you usually seated right there or in some other end of the room or another room?

A usually, I was right there. I might not have remained seated. I might have been asked to leave for a few minutes and then come back.

Q You were in charge of the organized crime unit of the police department for some time, weren't you?

A Yes, I was.

Q When was that?

A 1969, I imagine, until 1972 about.

Q Did you ever think whether or not this informa-

tion that Sam Houston was imparting was worthwhile or whether it was worthless?

A I felt it was worthwhile, that a good portion of it was worthwhile. I would also say there was a portion of it I was not able to evaluate.

Q Back in January 1970, was it pretty much common knowledge that -- among law enforcement officials -- that the mob was trying to take over restaurants and other businesses on Long Island.

A Yes.

Q Wasn't it also pretty much common knowledge among law enforcement people, and the subject of more than one investigation, that an individual by the name of Paul Vario was involved in the Golden Dome Restaurant as hidden principal?

A Was it common knowledge?

Q Yes.

A I was aware of it. It may have been common knowledge, I don't know.

Q Would you consider it to be worthwhile or sensitive information if Sam Houston told you if you can get Joseph Colombo or Paul Chieco to open up you could learn a lot about organized business?

A What?

Q Would it be pretty hot information?

A I would consider that hot information.

Q Joe Comompo and Paul Ciaco were --

A It's true, if you could have gotten them to open up, of course.

Q Isn't that a little like if you could get Charles de Gaulle to open up he could have told you about the French army in 1943?

MR. CAHN: Objection.

THE COURT: Sustained.

Q September of 1971, would it have surprised you to learn that the mob was moving into pornography, or was that pretty much known among law enforcement?

A I don't know about the timing, Mr. Druker.

Q How about in November of 1973, had you heard an individual by the name of Jimmy Knapp, by 1971?

A The name doesn't mean anything to me now.

Q Had you learned Jimmy Knapp was one of the major heads of one of the largest gambling operations in the whole Long Island area?

A I can only tell you what I know now. the name doesn't ring a bell with me. I heard man y, many names.

Q You were in charge of the organized crime unit?

A Yes. I will not sav I knew every name.

Q Have you heard the name Marty Hodis?

A Yes, sir.

Q He is supposed to be the pornography king in Manhattan or out in Long Island?

A Yes.

Q How far back did you hear of Marty Hodis?

A I would say six or seven years.

Q Back around 1970?

A Prior to that.

Q Wouldn't it be hot information to learn in May of 1972 that Marty Hodis was involved in pornography?

A No.

Q Had you heard that Marty Hodis was tied in with Jonny Francise?

A I don't know if the spelling is accurate, the name, yes.

Q Had you heard that back in 1970?

A That was a piece of intelligence information, yes.

Q If Sam Houston told that to Mr. Cahn in May of 1972 that would be pretty much old hat as far as you were concerned?

A I don't know if it was old hat. It was a matter of interest, I would say that.

Q It was a matter of knowledge to you already, long before?

A To me, yes.

Q Could this individual named Houston, could he have been something other than an informant?

A Not in my opinion.

Q In your opinion he was one hundred per cent informant?

A Pure and simple.

Q He couldn't have been a collector of any kind?

A Not in my opinion.

Q Now, you testified on direct examination about meals and money that you paid to Sam Houston or Mr. Cahn paid to Sam Houston, is that correct?

MR. CAHN: Objection. That was not the testimony.

THE COURT: There was a sum between forty and eighty dollars.

Q What was that for?

A I don't recall the conversation, or any descriptive conversation indicating what it was for. It was in response to a plea or request for additional money.

Q You testified that on at least two occasions you saw Mr. Cahn give such smaller amounts of money to Sam, is that correct?

A Yes.

Q Now, do you remember testifying before a Federal grand jury in this district on February 28, 1975, Chief?

A Yes, I do.

Q Do you recall being asked about the matters -- about that same matter?

A Yes.

Q I will ask you if you recall the following questions and if you gave the following answers:

"Did you ever witness Mr. Cahn paying this informant other sums of money, for example, pulling out money from his pocket and saying, here is money for food or anything like that?

"Answer: One time whn and where, I can't tell you, yes, I do have a recollection of one time, some discussions about money and my recollection is Mr. Cahn did give him additional money. I don't know what it was, how much,

"Question: Do you know what it was for, did he say what it was for?

"Answer: I can't honestly answer."

Do you recall those questions being asked and you giving those answers?

A Yes.

Q Further: "Question: Is this the only occasion that you can recall that happening on?

"Answer: I recall it one time. I can't say that it never happened again because I wasn't always with him."

Now, do you recall that question and that answer?

A Yes, I do.

Q Were they truthful at the time you gave them?

A At the time I gave them, they were. However, since that time I recall a different incident.

Q Your recollection has been refreshed?

A I recall another.

Q Did you have a little help?

A I recalled it on my own.

Q Do you recall this question and answer:

"Question: Did you think Mr. Cahn was just paying this money out of his own pocket?

"Answer: I don't know. I thought he was placating the individual."

Did Mr. Cahn ever tell you that he was billing the County -- withdrawn.

Do you remember the last question and answer I read?

A Yes.

Q Was that truthful?

A Yes.

Q Now, you recall that Sam made some sort of a plea and in response to that plea Mr. Cahn paid him this money from time to time?

A Yes.

Q You recall two occasions?

A PErhaps I should not characterize it as a plea. A request. I can't recall the conversation.

Q When did you first recall that conversation?

A Which conversation?

Q The first time that Sam -- I won't use the word "plea," the first time Sam asked for some extra money?

A When you asked me about it before the grand jury.

Q I am asking about the conversation. You remembered in the grand jury about a conversation?

A I remembered in the grand jury the fact that the informant had asked for additional money. I believe I so testified.

Q I can show you your grand jury testimony, but if I suggest you testified that you witnessed a payment on one occasion and you didn't testify about any conversation, would that refresh your recollection?

A If you say so. I haven't read it. I recall the conversation and the request.

Q Whether you testified to it in the grand jury, you recalled it in the grand jury, is that right?

A I didn't understand that.

Q Whether or not you testified about such a conversation in the grand jury that you did have it in your head at that time, was that your testimony?

A I can't really say that, Mr. Druker.

Q It might have come back to you at a later date, is that possible?

A that is possible.

(continued next page)

Q Mr. Spahr, you have been a police officer for how long?

A Since 1946, approximately 30 years.

Q You have a lot of investigative training either on the job or prior to becoming apolice officer?

A Not prior to, but on the job, yes.

Q Approximately 1946?

A Yes.

Q So that in 1974 you had roughly 28 years of investigative background?

A 28 years of police experience, yes.

Q In San Francisco in February of 1974, is that when the incident involving the car took place?

A Yes.

Q You were curiou when you went to that car to determine the identity of Sam Houston?

A Yes.

Q Did you look at the license plate on the car?

A Yes, I did, Mr. Druker.

Q I am asking you did you look at the license plate?

A As I approached the car, I looked at it.

Q What was the number?

A I didn't take the number. As I approached I

intended to take it.

Q You looked at the rental agreement?

A I believe it was --

Q Can you tell the jury what the company was?

A No, I can't.

Q Do you recall where this Nicholas Gentilli lived?

A No, the instant I looked at it I was interrupted and I replaced it. The name was the only thing I got from the agreement.

Q Didn't you think it might be easier to grap the license plate rather than working in and going tc the glove compartment?

A It might have been easier, but I am aware that in any given year a million cars are stolen in this country and that isn't counting the number of license tags, and when I see an individual leaving a car I know to be criminally oriented, I don't disregard the plate but I consider it lower in priority. The best thing was to go to the vehicle. I was also in a position, not having a piece of paper or pen -- I intended to commit it to memory, so I felt it was the last thing I would observe before I left.

Q Do you know anybody in the San Francisco police department?

A No, not personally.

Q Did you back then?

A No.

Q You could have run down a license plate number without too much trouble?

A If I had taken it, I could have.

Q You could do it from New York?

A Of course I can.

Q If that car was stolen you could have known about it within pretty short time?

A It would have been of no value.

THE COURT: Let's just answer questions.

MR. DRUKER: I'm sorry, may I have it?

(Whereupon the last question and answer were read by the Reporter.)

MR. DRUKER: I will move to strike it as not responsive.

THE COURT: Yes.

Q If in fact the car wasn't stolen, then you might have a lead as to Sam Houston's home address and true name, is that correct?

A That is correct.

Q Did you have occasion during the course of preparing for your testimony here to talk to Mr. Cahn on one

or more than one occasion, is that your testimony?

A Yes, sir.

Q Were you given at any time a copy of your grand jury testimony?

A Yes, sir.

Q Who gave that to you, Chief Spahr?

A I got -- I got it some time ago, Mr. Druker.

Q How did you get it?

A I don't recall.

Q I didn't give it to you, did I?

A No.

Q Anybody from the Government?

A No.

Q Mr. Cahn, did he give it to you?

A I don't recall if Mr. Cahn gave it to me or another attorney gave it to me.

Q Mr. Klein?

A Possibly, I don't recall.

Q He was Mr. Cahn's attorney?

THE COURT: You don't have to go into that. There is nothing to prevent him from seeing his grand jury testimony before he testifies.

MR. DRUKER: I am not so sure without an order --

THE COURT: Any witness before the grand jury is

entitled, in my opinion, to have a copy of his testimony if he requests it.

Q Did you make any such request of the Government or the Court?

A I made a request, yes.

Q to whom?

A I don't recall specifically to whom I directed my request.

Q You testified that you travelled to Reno, Nevada, on a number of occasions with the defendant, is that correct?

A Yes, sir.

Q how many occasions, to the best of your recollection, Chief?

A Over a period of five years or so, I would say eight, nine.

Q How many occasions did you transact any County business?

A When I travelled with Mr. Cahn?

Q Yes.

A All occasions.

Q On every occasion?

A Yes.

Q That is not what you told the grand jury, is it?

A Mr. Druker, I remember what I said before the grand jury. If you show me --

Q Let's take a look now.

Do you recall these questions and answers, Chief:

"Did there come occasions when you travelled to San Francisco on County business with Mr. Cahn?

"Answer: Yes, sir.

"Question: On any of those occasions did you make side trips to Reno, Nevada?

"Answer: Yes.

"Question: Approximately how many times?

"Answer: I would have no way of estimating, but it would be a number of times.

"Question: A dozen or so?

"Answer: It's a ballpark figure. You are talking about a long period of time.

"Question: On any of these occasions, did you go there strictly to eat or gamble or just about, in other words, not conduct County business?

"Answer: I would have to honestly say, Mr. Druker, that there were times we went there and did not conduct County business.

"Question: Whose idea would that be?

"Answer: Well, it's very difficult for me to say because the relationship that existed was we were together in San Francisco and if Mr. Cahn said we would have to go to Reno or Las Vegas, generally we went to Las Vegas or Reno, we did not question why we were going to Reno or Las Vegas, and it may seem here more than that, it was foolish but it's true. When I say we went sometimes to Reno and performed no office duty, I am not saying that anyone else along didn't, but I personally said I didn't perform any office duties."

Were your answers truthful at the time you gave them?

A Yes, with this exception, that when I said I went to Las Vegas or Reno, perhaps I did not perform -- it wasn't that no police function was anticipated --

Q You were asked, were you not, by me, if there were occasions when you went to Reno and you didn't perform any County business. Was it your answer on every occasion you went to Reno you performed business?

A we went there for a police purpose.

Q What is your testimony, forget about five minutes ago. Did you perform County business each and every time you went to Reno, Nevada with Mr. Cahn?

A Mr. Druker, each and every time I went to Reno,

Nevada with Mr. Cahn there was a police purpose or County business associated with that trip.

Q That is not my quesion.

THE COURT: Repeat the question.

(Whereupon the last question was read by the Reporter.)

A There have been trips when none was actually performed.

Q So there were occasions when you were in Reno and maybe to go to a show and gamble a little bit and not perform any County business, right?

A Yes.

Q More than one occasion, Chief?

A I doubt it, but I would have no way of saying.

(continued next page.)

Q When you had returned from your trips wherever it would be with Mr. Cahn, you would fill out a claim to the Police Department or Comptroller of Nassau County for reimbursement of travel expenses; is that right?

A Yes, I would.

Q Did you ever conceal on any of your claims the fact that you had been in Reno, Nevada?

A No, sir, I did not.

Q Weren't there occasions when you went out to San Francisco and then you would make side trips for a day or two to Reno, Nevada and then you would come to New York and you would file a claim to the Police Department of Nassau County, which would reflect San Francisco, nothing about Reno?

A that's true.

Q When you were in Reno on those occasions, you had a complimentary hotel room at Harrahs; is that right?

A Yes, sir.

Q That would show up in your County claim would it?

A If there was no expense, it was not in my claim.

Q You would have an expense for the hotel room in San Francisco?

A Yes, I would.

Q And on those occasions wouldn't you leave your

hotel room running in San Francisco?

A I would keep my hotel room.

Q You would have an unoccupied hotel room in San Francisco with the bill running on it and that's what would go into the County; right?

A If you call it an unoccupied room, I kept it.

Q You weren't in it?

A I was not in it 24 hours a day under any circumstances.

Q Sometimes you weren't in it for a few days at a clip; isn't that right, Chief?

A I wouldn't say a few days, Mr. Druker. I might have been away a few days at the moment.

Q The County wound up paying for a room in San Francisco in which you were not staying; is that correct?

A that is correct.

Q While you were off in Reno, Nevada, staying in a free room; is that correct, Chief?

A That's correct.

Q Did you see anything wrong with that?

A No, sir, I didn't.

Q You thought it was right?

A Yes, sir.

THE COURT: We'll take our mid-morning recess

3 now. The jury is to go back to the jury room. Please don't talk about the case.

(Recess.)

THE COURT: Bring in the jury and have a seat, Mr. Spahr.

MR. DRUKER: I have a couple of further questions, if I may.

THE COURT: Yes.

(Witness resumes the stand; jury enters court room.)

THE COURT: We're ready to resume. Mr. Druker continue.

Q Chief Spahr, with regard to the information, whatever information Sam Houston provided, did you follow up on any of this information?

A I don't know what you mean by "follow up."

Q Did you open any cases based on his information?

A I didn't specifically open any cases, no.

Q You didn't start any investigations based on his information?

A In the police department?

Q Yes sir

A No, sir.

Q Did you designate it to any outside agencies, whether Federal or otherwise?

A Just between the District Attorney's office and the Police Department it was discussed.

Q Finally, when you entered this car back in February, 1974, did you have a search warrant, Chief?

A No, I didn't.

MR. CAHN: Objection. I think he just made a mistake as to the day -- I'm sorry.

THE COURT: Any objection is overruled.

MR. CAHN: I'm sorry. Forgive me.

Q You didn't have a search warrant or court order of any kind; did you?

A No, sir, I didn't.

Q Did it occur to you that it might be an illegal act under California law, breaking into somebody's car without his or her permission?

A No, sir, my actions were predicated by the expediency of the situation. I felt that I had to act expediently.

Q So even if it was illegal, the expediency would override that?

MR. CAHN: Objection.

THE COURT: Overruled. You may answer.

A The thought it might be illegal never occurred to me, Mr. Druker.

Q What was the expediencey: and what was the great need to break into this individual's car?

A I wanted to make an effort to find out who this man really was.

Q This overrode any need to get any kind of court orders or anything else; is that right, Chief?

A I didn't give that matter any consideration, Mr. Druker.

MR. DRUKER: Thank you.

THE COURT: Is there any redirect?

MR. CAHN: None, your Honor.

THE COURT: Chief Spahr, you are excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. CAHN: Mr. Spinnato.

(The following witness having been previously called and sworn on May 4, 1976 resumed the stand.

THE COURT: Mr. Spinnato, you've been sworn before. You're being recalled in the same case. You are still under oath. Take your seat.

THE WITNESS: Thank you, sir.

(Witness resumes the stand.)

DIRECT EXAMINATION BY

MR. CAHN:

Q Mr. Spinnato, did there come a time when you met an individual who became known to you as Sam Houston?

A Yes, sir.

Q Could you tell the Court and jury approximately how many times you may have seen him?

A Approximately -- I'd say between ten -- ten and fifteen, your Honor, that's just a guess without having seen the documents. I would have to say that's an approximation.

Q When you saw Sam Houston, did you ever see him alone?

A Did I personally ever meet with him alone?

Q Yes, sir.

A No.

Q Where would you -- Who was with you when you saw Sam Houston?

A You.

Q And --

A And on occasions Chief Spahr.

Q Where would you meet Sam Houston?

A Do you want me to answer each place I've met him?

Q Well there were different cities?

A Oh, yes.

Q In those cities, where these meetings took place, where, specifically, would they take place?

Q Usually in a hotel, with one exception, in a hotel.

Q With one exception?

A Yes.

Q Where was that one exception?

A I don't recall the building, but it was one of the airline terminals in the Los Angles International Airport.

Q Was that the only time -- I'll withdraw that.

Were you with the defendant William Cahn at that time?

A Yes.

Q Was that the only time you saw Sam Houston outside of a hotel room?

A To the best of my recollection, I'd say yes.

Q When you were with the defendant, William Cahn, int the hotel rooms, Mr. Spinnato, did you ever see the defendant, William Cahn, give Sam Houston sums of money?

A Yes.

Q Do you know how much was given to him?

A Yes.

Q How did you know that?

A Well, there were different ways in which I would have known. There were occasions when Mr. Cahn would indicate "I'm giving you so much money." He would say that to the

informant.

There were some occasions when I would pay attention to the money being counted. That's about how I would know.

Q When, after these occasions, when you say you saw the defendant William Cahn give Sam Houston money, was there a procedure which you were following when you returned back to Mineola?

A Yes, I was asked to sign an affidavit which contained the fact that I witnessed the money being paid.

MR. CAHN: I ask that these be marked for identification.)

THE CLERK: Already marked.

Q I show you defendant's exhibit C, Mr. Spinnato. (Handing to witness.)

I ask you whether or not you know what that is?

A Do you want me to look at each one of them?

Q Yes, sir.

A Yes, sir? I'm sorry, what was your question? There were the affidavits I signed -- well, copies thereof.

Q Are these the exact copies of the original affidavits which you signed, sir?

A Well, to the best of my knowledge I would say yes.

(continued next page)

Q Did you sign these affidavits on or about the dates indicated on the affidavits?

A Yes.

Q Would you, from your own knowledge and recollection, Mr. Spinnato, know when, where and how much the defendant, William Cahn, gave to Sam Houston?

A Would I know now?

Q Yes, from your own recollection.

A Oh, not from my own recollection.

Q Would the affidavits refresh your recollection?

A As to that amount that I witnessed being paid, yes.

Q May I ask you, sir, to look at the affidavits and tell the Court and Jury, if you will, when, where and how much was paid that you saw the defendant William Cahn give to the defendant Sam Houston?

A From each of these (indicating)?

Q Yes.

A When, where and how much?

THE COURT: Yes.

A (Continuing) The 5th day of August, 1971, in Reno, Nevada, one thousand dollars.

The 7th day of November, 1970, in Las Vegas, Nevada, $750.

On the 11th day of May, 1971, in Atlanta, Georgia, one thousand dollars.

27th day of June, '71, Reno, Nevada, $1,000.

The 24th day of November, 1973, Houston, Texas, $750.

12th day of February, 1973, San Francisco, California, $750.

6th day of November, '71, Reno, Nevada, $1,000.

11th day of February, '72, in Reno, Nevada, $750.

7th day of April, '72, in Reno, $750.

8th day of May, '72, Houston, Texas, $750.

12th day of June, '72,Houston, Texas, $750.

16th day of July, 1972, Houston, $750.

7th day of October, '72, again in Houston, $750.

26th day of November, '72, in Houston, $750.

10th day of January, '73, in New Orleans, Louisiana, $750.

4th day of April, '73, in Chicago, $750.

On the 31st day of May, 1971, in Houston, $750.

The 12th day of November, '73, Houston, 750.

The 9th day of October, '73, San Francisco, 750.

10th day of December, '73, Atlanta, Georgia, 750.

25th day of February, '74, San Francisco, 750.

The 22nd day of April, '74, Las Vegas, Nevada, 750.

6th of May, '74, again San Francisco, $750.

Q Thank you.

Could you describe Sam Houston for us, please.

A Well, I'd say he was a man about 45 to 50 years of age, about five -- I guessed -- I'm not very good at heights and weights, but I guessed he was about six inches shorter than me. I'm a little over six feet. That would bring it around 5'6", maybe 5'7", dark hair, with a little gray in it, not very much; dark eyes and I really wouldn't venture a guess as to weight. I think I would be way off.

Q You and Sam Houston didn't get along very well, did you?

A No, sir.

MR. CAHN: Might we have a side bar?

THE COURT: All right.

(Side bar discussion.)

MR. CAHN: I don't want you to think I'm flaunting your Honor's ruling, but in view of Mr. Druker's questioning of Chief Spahr about how far he was from Sam Houston, so forth, I would like to, again, go into and offer the picture of Sam Houston.

THE COURT: I don't mind your having this fellow identified. What was the relevancy of what he looks like at the present time?

MR. CAHN: I'm going to tell them this is the man

(indicating).

MR. DRUKER: Irrelevant. I object to it. I think all it does, it might fix in the jury's eye an image because this looks somewhat like a photograph. It may impress them, "Gee, they must know the guy."

THE COURT: I'm not going to receive it now.

MR. NEIL CAHN: Mr. Druker, are you disputing the existence of Sam Houston?

MR. DRUKER: At this time, no. I don't think the Government is going to dispute the existence of an individual in this case. We're going to dispute what he was.

(In open court.)

BY MR. CAHN:

Q Mr. Spinnato, did there come a time when you helped prepare a composite picture of what you thought of Sam Houston?

A Yes.

Q I show you Defendant's Exhibit I for Identification (handing to witness) and ask you if you know what this is.

A That is the composite youve just described.

Q Of Sam Houston.

MR. CAHN: No further questions.

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THE COURT: You may cross-examine.

CROSS-EXAMINATION

BY MR. DRUKER:

Q Mr. Spinnato, you testified here last week; is that correct?

A Yes, sir.

Q At that time I asked you approximately how many trips you had taken out of New York State with the defendant William Cahn and you didn't recall exactly; is that right?

A Yes, sir, that's correct.

Q I'm going to ask you if it refreshes your recollection if I suggest there were 82 trips that you took outside New York State with the defendant, William Cahn, in the years 1970 to '74?

A I wouldn't argue with you, Mr. Druker. I didn't have any records available to me.

Q Would that be a fair figure, somewhere between 50 and a hundred?

A All right, yes.

Q Mr. Cahn asked you last week about -- withdrawn. You testified regarding Government's 39-A; that the signature on the check was not yours. Do you recall that?

MR. CAHN: Your Honor, improper cross-examination.

THE COURT: Let's see where it's leading to.

I'll overrule it at this stage.

Q Do you recall testifying about that, Mr. Spinnato?

A Yes, sir.

Q And then Mr. Cahn asked you if you recalled a conversation that you and he had had when you were home sick around the time of the endorsement of that check and in which he asked you if it was all right if he signed your name to a check and you said, "Yes." Do you recall him asking you that?

A Yes, sir.

Q Did such a conversation ever take place, to the best of your recollection?

A My answer today would have to be the same as then. I don't recall it.

Q Have you had occasion to review your sick leave records of the Nassau County District Attorney's Office in the last hour or so?

A I'd say more like 15 minutes.

Q Can you testify either from your own independent recollection or from having had your recollection refreshed by those records as to whether you were sick at any time around June of 1974?

A Of course I couldn't testify as to that with regard to my independent recollection, but in looking at the

document you showed me, there were no sick days indicated on that timesheet, if you will.

Q From at least March until roughly the end of the year; is that right?

A I looked in June. You asked me to look in June.

Q Right.

A There were none.

Q You testified that on a number of occasions you witnessed Mr. Cahn paying money to an individual in hotel rooms around the country; is that right?

A Yes, sir.

Q He would count this money out in front of you, 100, 200, 300?

A On occasion. I didn't always watch the process of the counting.

Q On other occasions would he just tell you how much he paid to the individual?

A Not me -- he usually -- he may have. He may have. I don't recall that. I recall more the situation where he'd say, "I have 750 for you." Not for me --

THE COURT: For the informant?

THE WITNESS: Right.

Q Then you would witness that?

A Yes.

Q Did you ever hear this individual ask for or beg for any monies in excess of what Mr. Cahn had paid him? I'm referring to smaller amounts such as $20, $40, $80? Did he ever say, "I need money for meals," or anything like that?

A Not that I can recall.

Q Do you recall this individual ever mentioning an associate that he traveled with or had with him?

A The informant mentioning that?

Q Yes.

A I don't recall; I'm sorry.

Q Did you ever witness Mr. Cahn paying any monies to the individual known as Sam Houston other than those monies which are recited in your affidavit?

A I don't recall any such instances.

Q Directing your attention back to roughly January of 1975 or thereabouts, did you have any conversation with Mr. Cahn regarding whether or not he ever paid any monies outside of what's reflected in the affidavits to this Sam Houston?

A I don't recall the date, you know. You say January.

Q It was a good year or so ago?

A I have a vague recollection after learning of these payments, of asking Mr. Cahn about it.

Q What did he say, to the best of your recollection?

A To the best of my recollection, well, he was under the impression that I was aware of it; that he had been making [illegible] payments. He said -- I don't know if he said this, but words to the effect that I knew or should have known or something like that.

Q That he was paying other monies to the informant?

A Well, as I recall, it was brought to my attention that the money was termed meal money. That's what I'm referring to.

Q Mr. Cahn intimated or said that you had previously had knowledge of the payment of meal monies; is that right?

A I think he assumed that I knew.

Q But you hadn't known, had you?

A I don't recall ever discussing it or hearing it.

Q Did you on any occasion make trips outside New York State with Mr. Cahn or which you knew ahead of time or subsequently developed there was no County business whatsoever, to your knowledge, transacted on those trips?

A In part, the answer to your question is, yes.

Q Let me ask it to you this way: Did he ordinarily say something to you like: "Joe, pack your bags, we're going to Houston," or "Las Vegas," or wherever it might be, "For three or four days or a week"?

A I don't think he ever told me to pack my bags. He would normally tell me where we're going.

Q Would he always tell you the nature of the business?

A No, no.

Q Would you assume when you were leaving that there was going to be some sort of County business?

MR. CAHN: Objection to what he assumed.

THE COURT: Sustained.

Q On any of those occasions did you discover once you arrived out at your destination that there was no County business to your knowledge?

MR. CAHN: Objection to his knowledge.

THE COURT: Overrule

A May I answer your question this way: It may not have been when I arrived at our destination, but there were occasions when somewhere along the line it came to my attention that I was not going to be called upon or I was not called upon to perform an interview or a function.

Q Any County business, right?

A (No response.)

Q Would it be fair to characterize some of these trips insofar as you subsequently discovered that they were pleasure trips?

A In part.

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Q Were there a number of these trips to Reno, Nevada?

A (No response.)

Q Trips on which to your knowledge no County business was transacted?

A Yes, sir.

Q Right. When you were there you might see shows, right?

A Yes.

Q And you'd eat dinner there?

A Yes.

Q You'd go to the casino, with or without Mr. Cahn?

A Yes.

Q And then you'd leave Reno without anything having happened insofar as Nassau County was concerned; is that right?

MR. CAHN: Objection --

THE COURT: Overruled.

Q To your knowledge?

A I'm sorry, I lost the question.

(Continued on next page.)

fols.

Q To your knowledge, you would leave there without any county business having taken place to your knowledge; is that right?

A Yes.

Q Sometimes these trips may be overnight trips; is that right?

A Yes.

Q Sometimes a couple of nights, right?

A It's possible, Mr. Druker. I have no independent recollection of -- it's very possible.

Q On how many occasions would you say you met this Sam Houston in Reno, Nevada?

A I should have counted them when I was going through the affidavits. Again -- half a dozen, maybe eight times.

Q Out of how many trips to Reno that you can recall?

A Other than the trips that are evidenced by the affidavits?

Q Yes, sir.

A Again, maybe a half-dozen.

Q Did Mr. Cahn ever go into casinos while you were in Reno, Nevada with him?

A Yes.

Q Did he gamble in the casinos?

A Yes.

Q Played blackjack, right?

A Yes.

Q Was he a $1 bettor or $2 bettor, to your knowledge, or something a little bigger than that?

A For the most part when I observed Mr. Cahn in the casino he usually would bet, I would say, $5 at the $5 table.

Q He played at the $5 table.

A With $5.

Q Did you ever see him play with bigger denominations of chips?

A Yes.

Q $25?

A Yes, I've seen him play with $25 chips.

Q And even 100 on some occasions; is that right?

A I recall one instance where he gambled $100 chip. I'm sorry, I don't know where that was, though.

Q You were head of the Rackets Bureau for the Nassau County District Attorney's Office for four or five years; is that right?

A Approximately.

Q As such you are in charge of the supervising investigation of and prosecution of organized crime cases by the District Attorney's Office; is that right-

A Yes, I hesitated because prosecution was usually handled by an Assistant outside of the Bureau.

Q You witnessed Mr. Cahn paying thousands of dollars to this individual named Sam Houston; is that your testimony?

A Yes, sir.

Q Did you think that the information that he was providing was worth anything near that, based on your knowledge of organized crime matters at the time?

A Well, there were instances when I felt the information that was forthcoming was of substantive value.

Q How about the bulk of it, Mr. Spinnato?

A I would say a lot of it, in my opinion -- I should preface my answer to be fair with the statement -- that shortly after I met this man it became evident that we were not going to get along.

Q Forgetting now your personal --

MR. CAHN: I object.

MR. DRUKER: I object --

THE COURT: Just a minute, Mr. Cahn. The witness has interposed a statement of his own to the answer of a question and I think, if Mr. Druker wants to question that explanation, he has a right.

Q Mr. Spinnato, forgetting what your feelings were towards him, whether or not he liked or loved you, I'm talking

now strictly about the value of the information that he imparted in your presence, to your knowledge.

A Some of the information that was forthcoming from him I did not feel was particularly earth-shattering -- (statementnot completed by witness).

Q Do you recall being interviewed a year, a year and a half ago by Mr. Goldman and myself?

A I remember being interviewed by you, but I really don't recall Mr. Goldman being there.

Q How about Mr. Tsotsos?

A On one occasion.

Q Do you recall telling us in your opinion this information wasn't worth two cents or words to that effect?

A As I recall it, Mr. Druker, to the best of my recollection, I recall stating I did not think the informant was worth two cents.

Q Now --

A Now -- go ahead, I'm sorry.

Q In that regard, I notice you used the word "informant" several times. Are you able now, looking back, on all of these meetings with this Sam Houston individual in 1970 to 1974, are you able to say with 100 percent certainty, Mr. Spinnato, that he was in fact an informant?

A At this juncture?

Q Yes, sir.

A No.

Q He may have been something else; is that right?

A It's --

Q This individual you saw Mr. Cahn paying thousands of dollars to?

A It's possible.

MR. DRUKER: Thank you, sir.

REDIRECT EXAMINATION

BY MR. CAHN:

Q Is it possible he could have been my Uncle Louis from California?

A It's possible.

Q Anything is possible, Mr. Spinnato; isn't it?

MR. DRUKER: Objection as being argumentative.

THE COURT: Sustained. Let the jury consider that as a matter of common sense.

Q Did there come a time, Mr. Spinnato, any time, prior to the time that this was suggested to you that you had any idea that Sam Houston was other than an informant?

A During the times that I had met with him, Mr. Cohn?

Q Yes.

A No.

Q When for the first time was this suggested to you?

A I would say, again, approximately some time within the past year.

Q Who suggested it to you?

A I believe I was asked the question by Mr. Druker. It may not have been a year ago. It may have been less. I don't recall. It certainly wasn't within the past six months.

Q Within the past year, Mr. Spinnato, approximately how many times did we have lunch together?

A I wouldn't want to guess. It was --

Q A ballpark figure?

A A hundred.

Q At any time during those luncheons did you suggest to me that Sam Houston was something other than an informant?

A Did I suggest that to you?

Q Yes.

A I don't recall ever doing that.

Q You answered a question of Mr. Druker that you said in your recollection of the conversation or the interview that the informant wasn't worth two cents; is that correct?

A Yes, sir.

Q May I suggest to you that you stated, "Any

informant wasn't worth two cents"?

A Did I state that to Mr. Druker?

Q Yes.

A I may have. I have no recollection of doing it, but that was my opinion.

Q That no informant was worth two cents?

A For the most part.

Q Now --

A I should correct that, paid informant.

Q Okay.

Mr. Spinnato, how many times during your tenure as an Assistant District Attorney under the defendant, William Cahn, did you come into the office and leave early?

A Come into the office late I assume is your question?

Q No.

A Come into the office --

Q I'll assume you didn't come in late.

A And leave early?

Q Yes.

A I would say there were a number of times.

Q Quite a number of times, you didn't?

A A number of times.

Q You didn't stay the whole day?

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A Yes, that's correct.

Q How many times during your tenure as an Assistant District Attorney did you come into the office, sit behind your desk and not perform your duty?

A Well, there were times when we weren't particularly busy and maybe just sat around, talked.

Q And did nothing?

A But talk.

Q When you came into the office that day, may I assume that you expected to perform County business?

MR. DRUKER: I'm going to object for the same reason Mr. Cahn objected to my question about Mr. Spinnato's assumptions.

MR. CAHN: This is mine.

THE COURT: You're asking the same question to which I sustained an objection.

MR. CAHN: Pardon, sir?

THE COURT: You're asking a question similar to that to which I sustained an objection when Mr. Druker asked it. I'll sustain the objection.

Q On many of the occasions where you met with Sam Houston and the defendant, William Cahn, isn't it a fact, sir, that you were in and out of the room quite often?

A That did happen. I don't know if it happened many times but it did happen.

Q And, you testified, did you not, that you had a conversation with me in January of 1975 about meal money, or thereabouts?

A I believe my testimony was that I had a vague recollection of discussing with you at some point within -- you know, the past year -- that I asked you, or we discussed -- it's very vague in my mind -- we discussed whether or not what I recall was characterized meal money was given to the informant.

Q And at that time or at any other time, Mr. Spinnato, did I directly or indirectly ever make any attempt to induce you to lie for me?

A No, sir.

MR. CAHN: One moment, please.

(Pause.)

Q Do you recall, Mr. Spinnato, a trip which you made with me -- which you made with the defendant William Cahn to London in reference to Joseph Colombo?

A Yes, sir.

Q And would I be correct in characterizing the purpose of that trip --

MR. DRUKER: I object to the leading.

THE COURT: Suppose you ask him the purpose.

Q Was this trip ultra-confidential?

A As far as I was concerned, in the investigation and the office was concerned, I considered it to be.

Q Ultra-confidential?

A Confidential, certainly.

Q Did Sam Houston give us information as to the purpose of that trip?

A As I recall it, Mr. Cahn, to the best of my recollection, he gave information concerning the fact that we went -- as to the purpose, I don't recall that.

Q I show you this and just ask you if it refreshes your recollection.

A I believe this is what I testified to.

Q Does it refresh your recollection as to whether or not Sam Houston gave us information as to the purpose of our trip to London?

A No, it does not. Again, it is just that we went. He knew we had gone.

Q If he was something other than an informant, would he have had knowledge of that?

MR. DRUKER: I object.

THE COURT: Sustained.

MR. CAHN: Just one or two more questions.

Q You testified that some of the information you thought had value?

A Yes.

Q And some of the information you characterized I believe as not particularly earth-shattering?

A Earth-shaking.

Q When he gave information, Mr.Spinnato, which you thought had value, did you have any reason to suspect or believe that he was anything other than an informant?

A No.

MR. CAHN: No further questions.

RECROSS EXAMINATION

BY MR. DRUKER:

Q With regard to the meals money discussion that you testified to you had with Mr. Cahn about a year ago, is it fair to say that Mr. Cahn's recollection of the evidence was at odds with your recollection of the events?

In other words, he remembered something about paying meals money to an informant or said he remembered something about it and you didn't remember anything about it?

A I believe I asked him if he had been paying meal money to an informant and he said, yes, words to the effect that I knew about it or should have known about it.

Q Were you asked this because you had -- I'm sorry -- did you ask Mr. Cohn this question because you had been asked it in the Grand Jury?

A That is very possible.

Q To your knowledge, did you testify in the Grand Jury before or after Mr. Cahn did?

MR. CAHN: Can't we stipulate? I will.

A Both.

Q You testified early in February of 1975?

A Yes.

MR. DRUKER: May I stipulate Mr. Cahn testified on February 21, 1975, or thereabouts?

MR. CAHN: Yes.

Q You testified after that, too, did you not?

A Yes.

Q Now, did Mr. Cahn at that time state that you and he had had previous conversations back in 1973 or 1974 about this meals money matter?

A I don't think I understand.

Q Going back a year ago, did he say something to you to the effect, Joe, don't you remember back in a previous year I told you I was paying meals money to Sam?

A If not the substance of the conversation, that was part of it, somehow. I don't know if it was put in those words.

Q You didn't recall having discussed this matter with him back in 1973 or 1974, right?

A No, sir.

Q Did he say anything to you to the effect -- Joe, don't you remember Sam told us he had an associate who used to travel with him?

A He may have said that to me.

Q You don't recall that being discussed back in 1973 or 1972 or early 1974, do you?

A No. I did not recall.

MR. DRUKER: Thank you.

MR. CAHN: No further questions.

THE COURT: Thank you, Mr. Spinnato.

THE WITNESS: Thank you.

MR. CAHN: May we approach?

(The following took place at side bar):

MR. CAHN: Your Honor, number one, because of the awkwardness of the situation -- I am taking the stand in this case -- I would like to have time to confer with Mr. Bogin. I was wondering if we can take an early lunch.

THE COURT: And resume at a quarter of two.

MR. CAHN: Fine.

(The following took place in open court):

THE COURT: Ladies and gentlemen, we will take an early lunch today. We will resume at a quarter of

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two. During the hour or so we are apart don't talk about the case amongst yourselves or don't let anybody else talk with you.

Thank you.

(The jury left the courtroom.)

THE COURT: Now, I suppose because of the new indictment there may be some changes in the request to charge. Even if the case is going to run for the next week, I would like to have any requests by Wednesday noon. Anything to do given other than what Judge Dooling charged.

MR. DRUKER: The only area I can think of offhand, and I may have to research it -- I don't know if the Court has the answer -- it's the Government contention that of course Mr. Cahn had to have knowledge of the LEAA funding in charges 1 through 10 and have knowledge that his statement was false, but I don't think he had to have knowledge of any specific LEAA guidelines or provisions or statutes. It's the Government's position, just like anything else, ignorance of the law is no excuse.

In other words, he didn't have to know there was a guideline 2.54 which says you can't double-bill or --

THE COURT: That is substantially what Judge Dooling charged.

MR. CAHN: No, I don't think so. First of all, there was no false statement counts in the first indictment.

MR. DRUKER: The question didn't come up on the one thousand and one area.

THE COURT: The jury could find that double-billing was fraudulent --

MR. DRUKER: Yes.

MR. CAHN: With all due respect, I point out that I don't think that is the element to which Mr. Druker was alluding. Certainly, ignorance of the law in reference to a rule or regulation of an entity is not the same as saying ignorance of the law. The [illegible] has a great deal more force and is a great deal more concerned with the public than just some rule or regulation or society -- ignorance of that can be extremely important as far as the first ten counts are concerned.

THE COURT: That is opposite to what Judge Dooling said. He said the jury can find there was evidence of double --

MR. DRUKER: There was no guides permitting double-billing.

THE COURT: I don't know that that is necessarily a change from the charge before.

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MR. NEIL CAHN: I don't want to characterize Judge Dooling's charge, but there were two parts to the charge. One part was the statement made about the possibility of double-billing being fraudulent and the other part was the specific list of four elements of the offense. The part which he talked about, double-billing, I submit single-billing under certain factual circumstances, if it violates a known policy can be fraudulent. A lot of things could be fraudulent that are not specifically declared illegal. The key element demonstrated by Judge Dooling's charge is the third element, that the defendant must have actual knowledge that what he did was in fact prohibited.

MR. DRUKER: Believed, was the term. I believe he refused to charge knowledge. A belief, if the defendant -- if you find that the defendant in good faith believed --

MR. NEIL CAHN: No, I'm talking about the third element of the charge, not the three-page recitation in each and every one of the -- the third element was the defendant's knowledge.

THE COURT: Knowledge that he was double-billing.

MR. NEIL CAHN: No, knowledge of the prohibition.

THE COURT: All right, I will look at it.

MR. NEIL CAHN: Secondly, your Honor, as it

relates to Counts One through Ten, in Counts Four through Ten there is no affirmative misrepresentation charged. I submit that the requirement that there be an actual concealment imputes or requires that proof beyond a reasonable doubt as to the defendant's affirmative act of concealing, thereby indicating some actual knowledge of a prohibition, which he was attempting to circumvent --

THE COURT: That is the same argument over again.

MR. DRUKER: The Government will rely on circumstantial evidence --

THE COURT: What I requested was if there be any separate request to charge, I want them in writing by Wednesday noon.

MR. CAHN: I have witnesses coming from all over trying to arrange airline schedules, not only with the airlines but with their personal schedules. Judge Dooling was kind enough to permit the character witnesses to interrupt testimony and give their testimony and leave. I would ask the Court's indulgence.

THE COURT: Within reason. I don't understand why you have witnesses under subpoena here this morning when you did not intend to call them until after you've testified --

MR. CAHN: We have taken care of that, your Honor.

THE COURT: Good.

MR. DRUKER: In light of some of the testimony that has taken place, I may ask the character witnesses some questions more than previously anticipated. But it will be based on the evidence that has come out in the case and not anything out of left field.

THE COURT: All right, you have that right.

(A recess was taken at this time until 1:45 p.m.)

(Continued on next page.)

AFTERNOON SESSION
(2:00 p.m.)

SS#1pm

THE COURT: Everybody is ready.

MR. BOGIN: Yes, your Honor.

MR. CAHN: Your Honor, again, I'm sure it gives rise to a misunderstanding. Mr. Druker was obliging me on the service of a subpoena which indicated that I wanted all expenses including travel expenses for trial that were given to an informant by the name of Michael Fiori. Mr. Druker claims I served the wrong party. In any event, he says he will oblige me by taking care of it. Specifically, the subpoena requests travel expenses with which Mr. Druker was personally concerned or Mr. Druker's office, and now he says, "Well, that's in the Marshal's office. I'm not going to produce that."

MR.DRUKER: Mr. Fiori, for whatever relevance, was a witness testifying for the Government on trials three or four years ago. I was getting the information from DEA. I understand they have it about the payments to him which total about $46,000, Secret Service I think paid to him another $1,000. Now Mr. Cahn has asked for his travel records. I don't have, or the U.S. Attorney doesn't have such records. The Marshal's office keeps those.

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Each time Mr. Fiori would come in from wherever he came in, he would get ten cents a mile plus $36 for the overnight stay. First of all, I don't think this is in the end run going to be admissible in any fashion, but even conceding it does, I think I have gone about as far as I'm going to go without a further direction of the Court.

THE COURT: Does the Marshal have the record?

MR. DRUKER: I know the Marshal keeps the records of payments of travel expenses to witnesses. How he keeps it, by year, witness, I don't know. I think the best bet is for Mr. Cahn to give a subpoena to the Marshal, unless your Honor wants to direct the Marshal to produce it.

THE COURT: See if you can get it faster.

MR. DRUKER: Might we have an offer of proof?

THE COURT: Do you have the times involved, Mr. Cahn?

MR. CAHN: The times he testified on behalf of Mr. Druker's office.

MR. DRUKER: My former office.

MR. CAHN: Your former office. It was in '72 or '73. Maybe we can wrap this up with an offer of proof. I think I know what the purpose is going

to be. I submit if what I expect is going to be the case, it's going to be inadmissible.

THE COURT: Has he some relationship to the Sam Houston testimony?

MR. CAHN: In my judgment, your Honor, it has a very definite relationship to Sam Houston, my state of mind, innovativeness --

MR. DRUKER: Mr. Cahn is going to try to show he -- what relationship --

MR. CAHN: No direct relationship to Mr. Houston except there was an identification of Sam Houston by Mike Fiori to me.

MR. DRUKER: In 1975 my understanding, Mr. Cahn went over to Italy, showed Mr.Fiori a picture of this composite, Michael Fiori said, "I think I know who that is. I will help you find him," they had negotiations which broke down.

THE COURT: Is he available?

MR. DRUKER: His whereabouts is known. He's probably still acting as a DEA informant. He is overseas. He obviously wasn't able to help Mr. Cahn with the Sam Houston thing. I submit there's absolutely-- Mr. Fiori's travel expenses pursuant to a trial three years ago has absolutely nothing to do with this.

THE COURT: What has it to do with?

MR. CAHN: We're talking about, and Mr. Druker was the one who brought out the innovativeness of law enforcement, and I submit that this--

MR. DRUKER: I did?

THE COURT: Let me listen. What is it, Mr. Cahn?

MR. CAHN: That this has direct bearing on the Government's innovativeness in reference to paying this informant.

THE COURT: What have the travel expenses to do with it?

MR. CAHN: A method of paying an informant money to which ordinarily he was not entitled.

THE COURT: If he's entitled to ten cents a mile plus $36, what's the issue?

MR. CAHN: I submit, your Honor, I have information that he was not paid that. He was given more on the basis of--

THE COURT: You've had plenty of opportunity to depose him if you wanted to.

MR. CAHN: Pardon?

THE COURT: You've had opportunity to depose him if you wanted to.

MR. CAHN: Who, your Honor?

THE COURT: Fiori.

MR. CAHN: It's not Mr. Fiori I'm seeking to depose -- I'm seeking to depose -- excuse me, I didn't understand.

MR. DRUKER: First of all, without conceding the truth of Mr. Cahn's representation, and I sharply disagree with him, let's assume for the sake of argument Mr. Fiori was paid improperly by federal authorities for appearances in this district. I don't see how that becomes relevant. Is the defense going to be now that two wrongs make a right? That has absolutely nothing to do with this trial. Mr. Fiori was paid air fare plus a dime a mile. When Mr. Fiori was temporarily located within the country, he traveled from wherever he was to New York to testify, he was paid ten cents a mile plus $36. Nothing more to my knowledge. Even if he had been paid for trips he didn't take, let Mr. Cahn have that presented to a grand jury and the people responsible can be indicted. It doesn't help him out if other people were violating the law.

MR. CAHN: Your Honor, I misunderstood your Honor. I say to you I do have a deposition taken from Mr. Fiori before the Consul in Rome, Italy.

MR. DRUKER: I have no objection to the Court's seeing it in camera, I won't ask to see it, to determine the relevancy.

MR. CAHN: An innovative method of paying an informant moneys. I submit to your Honor that this is part of the heart of the defendant's case, and that it is done by law enforcement, and including law enforcement in this district.

MR. DRUKER: Based on that, I move to quash the subpoena entirely.

THE COURT: Let's see if we can get the figures. Let me look at it. Let me look at the deposition tomorrow night. See what the Marshal can tell you, please.

Get the jury in, please.

(The jury enters the courtroom.)

THE COURT: We're ready to resume, Mr. Cahn. Your next witness. MR. BOGIN. Might I ask your Honor's permission with a memorandum pad to take notes?

THE COURT: Yes, that's all right.

W I L L I A M C A H N, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BOGIN:

Q You are the defendant, William Cahn?

A I am, sir.

Q You're a lawyer?

A I am.

Q When did you enter the bar, Mr. Cahn?

A Pardon?

Q When were you admitted to the bar?

A June of 1949.

Q In the State of New York?

A In the State of New York.

Q You have been practicing continuously ever since?

A Yes.

Q Have you been in various capacities a member of the District Attorney's office in Nassau County?

A I entered the District Attorney's office January 14, 1950.

Q In what capacity at that time?

A I was appointed an Assistant District Attorney by the then District Attorney, Frank A. Gallatta.

Q As a matter of fact, you were admitted late in 1949 and entered the District Attorney's office early in 1950; that is that you actually did not practice any other

type of law other than as District Attorney?

A No, sir, from June of 1949 to December of 19-- through December of 1949 I was engaged by a private law firm in the civil practice of law.

Q But only for that short period of time?

A Only for that short period of time.

Q Thereafter your entire career was related to the District Attorney's office in Nassau County?

A Yes, sir.

Q Would you please define to the Court and jury the succession by which you achieved the office of District Attorney?

A From January of 1950 I was assigned to the District Court Bureau of the District Attorney's office, which was responsible for the investigation and prosecution of misdemeanors.

Q Who was the District Attorney at that time?

A Frank A. Gallatta.

Q Go ahead.

A I also, during that period of time, in each month, was assigned to the indictment bureau, consisting of one Assistant District Attorney, but when the man in charge of the Indictment Bureau was on vacation, I took over and was responsible for the presentation of all felony

cases to the grand jury in the County of Nassau.

In 1953 I was appointed as Deputy Chief of the Homicide Bureau in the District Attorney's office, and assisted the then chief Edward G. Robinson, in the investigation of all homicides in Nassau County.

In 1954 I was requested by--

MR. DRUKER: Excuse me. Might I ask if the defendant -- if he is testifying from his recollection or notes he has?

THE WITNESS: It's blank.

A It's my recollection.

In 1954 I was requested by District Attorney Gallatta to form and head up a Rackets Bureau, and Organized Crime bureau, which I did, and I continued as chief of that bureau in charge of the investigations and trials of all major Organized Crime cases in Nassau County, until 1959, I believe, at which time Emanuel W. Levine became District Attorney of Nassau County. He combined the Rackets Bureau and the Organized Crime Bureau, made it into one bureau, and I became chief of that bureau. I remained as chief of the Organized Crime and Homicide Bureau until September of 1962, when Emanuel Levine resigned.

I was appointed September 20th by the Governor as District Attorney of Nassau County. I stood for election

in November of 1962.

I was elected and was elected each -- for three years on four separate occasions.

Q That was from 1962 until 1974.

A I was District Attorney of Nassau County from 1962 through December 31 of 1974.

Q You have accounted for a period of almost twenty-five years?

A Yes, sir.

Q Coming back to some of the functions that you served as an Assistant and later as a District Attorney, when you commenced to function as a chief of the Homicide Bureau and the Rickets Bureau, the Organized Crime Bureau was one of your principal activities involving investigations?

A Yes, sir.

Q Would you care to enlarge upon it?

A Well, Nassau County is a suburban county, and the beginning of 1950 it came to the attention of the District Attorney's office that there were approximately well over 119 member of organized crime residing in Nassau County.

During that period of time there was a great deal of activity involving the so-called Families of

Organized Crime which affected Nassau County and as a result this bureau was formed for the purpose of receiving intelligence, investigating activities of Organized Crime in the milk industry, the carting industry, the car industry, the phonograph record industry, the juke box industry, and I was in charge of the investigation and the prosecution of all of those cases.

Q So that a large part of your time was spent in investigations.

Did you also travel in pursuit of these investigations?

A Not at the beginning, no; when I say "travel," the travel was limited to within the metropolitan area and within the State of New York with rare exceptions, possibly into Jersey and Connecticut at the beginning.

Q How about later on?

A After Mr. Levine became the District Attorney of Nassau County, there came a time when cases which were developed throughout the United States had a direct and indirect effect on investigations in Nassau County, and I did start to travel a great deal on behalf of the District Attorney's office as an Assistant District Attorney pursuing the investigations and prosecutions of those cases.

Q Later on, when you became the District

Attorney of Nassau County, how did you define or assign yourself areas of responsibility?

A In 1962, when I became the District Attorney, of course, it's a great deal of responsibilities in an administrative responsibility; however, I enjoyed investigations and prosecutions. I found it almost impossible to continually involve myself with the trial of cases, but I found that I could since I was usually only hours away, maintain an active interest in the investigation of cases and so I gave the responsibility of administration to Chief Assistants, executive assistants, wherever possible, and whenever feasible, and I maintained a most active part in the investigation of major cases in the office.

Q To your knowledge, Mr. Cahn, of the customs in other District Attorneys' offices, would you say this was a customary arrangement or not?

A It would depend upon the size of the office, Mr. Bogin. There are some district attorneys who maintain only an administrative function and left all matters of investigation and trials to assistants. I did not. I conducted the office of District Attorney as I saw it needed be conducted.

Q As the District Attorney, did you at one time or another become affiliated with various professional

organizations?

A Yes, sir.

Q Will you tell us which those are.

A Well, of course, the Nassau County Bar Association was almost immediate, the local bar association; however, as an Assistant District Attorney I joined the New York State District Attorneys Association and in 1962 when I became District Attorney of Nassau County, I joined and became active in the National District Attorneys Association.

I believe I attended my first meeting in Los Angeles, California.

After I became District Attorney I assumed an equally active role in the New York State District Attorneys Association and was elected to various offices in that association, including, I believe, in 1967, I was elected president of the New York State District Attorneys Association.

I became a member of the various committees involved with the National District Attorneys Association and then was elected, I believe, vice president and president-elect and then eventually I think in Saginaw, Michigan, I was elected president of the National District Attorneys Association.

Q By the way, are you still a member of the National District Attorneys--

A Yes.

Q Do you have your identification card for that association?

A Yes.

Q Have you got it here with you?

A Yes.

MR. DRUKER: I object.

THE COURT: I don't think there's any dispute about his membership.

MR. DRUKER: I'll stipulate Mr. Cahn is a member of the National District Attorneys Association.

MR. BOGIN: I'll accept the stipulation. Thank you.

Q What other associations, professional or otherwise, would you have that would be relevant to this discussion?

A I'm a member of the Criminal Law, and specifically the general bar association, generally, the New York State Bar Association and thereafter, I believe it was sometime in 1969, I was instrumental in forming a National College of District Attorneys and became a member of its

Board of Regents and a member of the faculty.

Q Do you have or can you describe the purpose of the National College.

A To afford District Attorneys, prosecutors, from all over the country -- as a matter of fact, internationally, the opportunity to continue their education with specific relationship to the duties of a prosecutor.

Various courses were offered. At first there were courses only offered in the summertime, on two different occasions, and then eventually the college expanded and offered seminars throughout the country.

Q Did you have a great influence in the work, defining the curriculum of the college?

A I was a member of the curriculum committee and I would like to think that I had some valuable input into establishing not only the curriculum but the success of the college.

MR. Cahn, just to fill out the picture, what is the magnitude of the Nassau County District Attorney's office in terms of size, people, population, its relationship to other large communities in the country?

A When I left the Nassau County District Attorney's office there were over 100 Assistant District Attorneys, a number -- quite a number of investigators, both

assigned from the Nassau County Police Department and one's own investigators with a budget well over $1 million and I'd say in relationship to size -- well, Los Angeles is first, Chicago is second, Brooklyn is third, fourth -- I would say in relationship to size, Nassau County is within the first ten largest District Attorneys offices in the country.

Q You had the responsibility of administering that entire operation?

A Yes, sir, I did.

Q Along with your work in the investigative field?

A Yes, sir.

Q Do you belong to any other organizations besides professional organizations, Mr. Cahn?

A Yes, I belong to many fraternal, civic, religious organizations.

Q What civic organizations?

MR. DRUKER: Your Honor, I'm going to object to this.

MR. BOGIN: I'll withdraw it.

THE COURT: Very well.

Q With respect to your travels for the District Attorney's office, during the period of time when you were

District Attorney, Mr. Cahn, were you involved in investigations with specific relationship to the jail conditions in the county of Nassau?

A Yes.

Q Will you describe some of those things?

A Yes.

Approximately 1929, the middle of '69, many complaints were brought to me personally about conditions within the Nassau County Jail in reference to smuggling of narcotics into the jail, brutality in the jail, unrest in the jail, treatment of prisoners in the jail, and this took place, this kind of complaint was brought to me, I would say, about three or four years before.

At that time I attempted to put two law enforcement officers from St. Louis into the jail and-- to determine exactly the conditions of the jail, and the treatment of the prisoners therein.

There was a problem with the then County Executive. This time it was my intention to find out what was going on in the jail, if anything, and therefore rather than have any charge of political taint connected --

MR. DRUKER: I object to this.

THE COURT: I'm not sure what the relevancy is.

MR. BOGIN: Subject to connection, your Honor, need to travel. If you wish, we'll go to the

side bar and I'll discuss it.

THE COURT: Let's go on for five minutes, see where we get.

A (Continuing) I went to that very same County Executive and informed him that I would like to conduct such an investigation in the jail for at least a year, using a private detective agency rather than a law enforcement agency.

Q May I interrupt you, Mr. Cahn. Within five minutes can you bring this back to relevancy to the present situation?

A Well, it was a different method of investigation used. It was innovative, it was new. I received the permission of the County Executive to conduct this investigation and I had engaged pursuant to that a private detective agency in San Francisco because I felt by using that agency, who was recommended to me by a gentleman in whom I had a great deal of trust, there would be less likelihood of the investigation being leaked or being learned about.

That investigation lasted two years and it was secure during all that period of time.

Q Mr. Cahn, did that investigation take you out of and into areas like San Francisco and other places? Was it this kind of county business that you often attended at

other times when you had other business independent of these?

A That investigation took me throughout the country interviewing prospective undercover agents to place into the Nassau County Jail. Yes, it took me to quite a number of places.

Q In connection with traveling -- I'm sorry, I'll withdraw that.

In connection with your work for the private entities, such as the National District Attorneys Association, the College and others of that kind, did you also travel throughout the United States?

A Yes, sir.

Q Just as a matter of interest, where, for the most part, were the meetings of these organizations held?

A San Francisco, Honolulu, Miami, Paradise Island, Mexico City, Jackson Hole, Wyoming.

Q Would you characterize these places as places of interest in the country, some resort places and other sightseeing areas?

A Interest, glamorous.

Q Have you any idea why these were selected as the sites for these meetings?

A Yes.

Q Why?

A It was the specific selection -- for two members, to bring as many members of the National District Attorneys Association as possible, the attractiveness of the place and also we had to depend if and whenever possible on the cooperation of the local District Attorney.

(Continued on the next page)

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Q When you traveled to these places, did you also have business often for the County of Nassau in the same area?

A Often, but not always.

Q When you traveled for the County of Nassau, how did you travel in terms of class of travel?

A Elected officials of Nassau County were permitted to travel first class.

MR. DRUKER: I object. The question was how did he travel.

THE COURT: Overruled.

A I traveled first class.

Q People who accompanied you, Chief Spahr, Mr. Spinnato, how did they travel?

A When they traveled with me they traveled first class. If they traveled alone, they traveled coach.

Q When you traveled for the County of Nassau, you had a mechanical method of securing either reimbursement or funds for the purpose ofthis travel. Will you describe that general method?

A In most instances, I would take an advance from the prosecution fund. The prosecution fund was again like a petty cash fund. During my tenure as district attorney, I believe it went from an amount of $6,000 to $7500.

And it was a rotating fund.

In other words, as quickly as possible it always had to be brought back to that amount of $6,000 or $7,500.

When a trip was contemplated, it was always a guess, I would take an advance on the basis of where I was going, how long I expected to stay, and who was with me.

Q This advance, when you took it, paid for the initial cost of the trip?

A That is correct. And there were occasions that I made the money out of my own pocket.

Q When the trip was concluded --

A May I explain something else? All of this, this advance from the prosecution fund to me, did not include the air fare. The air fare was paid from the prosecution fund usually directly to the travel agency.

Q That is to say, when you scheduled a trip you made arrangements with the travel agency to secure the transportation for you?

A That is correct.

Q And they would invoice the County by way of the prosecution fund, is that correct?

A (No response.)

Q Or?

A In most instances, when the travel agency was

paid by the prosecution fund, a claim was put into the County of Nassau in the name of the prosecution fund, reimbursing the prosecution fund for the air fare which had already been paid to the travel agency.

Q That took care of the transportation of each trip?

A Yes, unless during the trip another trip had to be made that was not involved and if monies were laid out by me for that trip, then I would put a claim in.

Q The prosecution fund or to the County --

A If the prosecution fund money was used, yes; if my own money was used, then I put the claim in in my own name.

Q That took care, again as we described, of the transportation phase of the scheduled trip, but you, for purposes other than transportation -- hotel and means and incidentals; is that correct?

A Contemplated expenses, yes.

Q How did you obtain reimbursement for theprosecution fund of that?

A As soon as I returned, perhaps a day or two later, I would put in a claim to the County Comptroller in the name of the prosecution fund that would have to list the purpose of the advance taken from the prosecution fund.

If I took $500, I would have to say hotel bill $250, meals -- usually $20 a day was allotted -- and so forth.

Q In that fashion the prosecution fund was made whole?

A Yes. The prosecution -- a check was made out to the Comptroller's office, by the Treasurer of Nassau County, directly to the prosecution fund -- not to me.

Q You never saw that money?

A No, unless the claim was made out in my name. Then the check would be made out in my name, and if I had taken money from the prosecution fund I would redeposit the money into the prosecution fund.

Q Some of those claim forms are reflected in the Government's exhibits in evidence?

A Yes.

Q You don't need those to refresh your recollection at this time?

A No.

Q There came a time when you also traveled for the independent organizations, that is the private organizations, not only the National District Attorneys' or ganizations and others -- when you did travel for these entities did you receive payment by way of reimbursement for any of the expenses on any of those travels?

A When I traveled on behalf of the National District Attorneys' Association, the agreement which I had with the National District Attorneys' Association was that expenses would be paid.

Q I want to go back to some other material, Mr. Cahn, relative to your background. In supplying your services to the National District Attorneys' Association and to others, did you lecture at these meetings from time to time?

A Yes, sir.

Q Did you also write any articles relative to the work of the National District Attorneys' Association?

A Many.

Q I'm sorry?

A Many.

Q Did you author any books?

A Yes, A Mock Trial on Narcotics, which is sold by the National District Attorneys' Association. I don't get any of the proceeds. It goes directly --

MR. DRUKER: I object.

THE COURT: Overruled.

A I don't get any --

THE COURT: No. You answered the question which was not -- you are going beyond answering the

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question. It is up to Mr. Bogin for the next question.

Q Mr. Cahn, did you receive any awards in recognition of the work you did for the National District Attorneys' Association and others of these national agencies?

A Yes.

Q Would you tell us about those, please?

A Yes, sir. In 1967, they voted me the Prosecutor of the Year. I believe it was '67.

Q Were there any other awards you can recall?

A There were awards of recognition by the Association, some by the colleges, and of course other organizations.

Q Mr. Cahn, what is an informant?

A An informant is an individual who gives information to a law enforcement officer relative to criminal activity, usually to one individual within the law enforcement picture.

Q Why one individual, Mr. Cahn?

A Because of the fear of discovery.

Q Where does an informant come from? Who is he in terms of his background?

A An informant usually comes from the gutter. When you go down in the sewer you don't come up with diamonds.

He is criminally oriented.

Q Is he a member of the underground, usually?

A He can be, he can be on the outskirts of criminal activity. Usually in a position to get information and he usually sells it. But that does not necessarily mean that that is the only reason for an informant to get information. Money is most important --

Q What would you say is the common denominator with respect to all informants?

A The security of his identity.

Q Would you develop that for us?

A Yes. Informing is a dangerous business.

Q Why?

A Because he subjects himself to the possibility of being killed and thereforethe informant must develop a trust of the individual with whom he is dealing. And he also must do all in his power to maintain his security, his identity.

And very often it doesn't always work out. It hasn't worked out on many occasions throughout the years.

Q Informant is notthe same as an undercover man?

A No. An undercover agent is usually a government employee used to possibly infiltrate, used to possibly set up or, well, not entrap but set up, for instance, if I

can give you an example, a buy of narcotics, penetrate a gambling syndicate and thereby gather information that way.

But his remuneration is the same. It is payment of wages from the governmental agency from which he operates.

Q An informant bargains, doesn't he? An informant differs from an undercover agent in that he actually bargains for the amount of money he is going to receive, doesn't he?

A He bargains, he cajoles, he claims his information is worth a great deal more than it may be. He will do many, many things.

Q How trustworthy do you consider the information that an informant would supply?

A An informant rarely testifies to the value of his information. It has to depend on whether his information can be corroborated by other information that you get from other informants or whether his information corroborates information which you already have.

In rare instances, Mr. Bogin, do you expect the informant to take the witness stand. Undercover agents will. But in rare instances will an informant.

Q That is because of the needs for confidentiality of the man's identity?

A That is because he is afraid of getting killed.

Q As a matter of fact, because of that situation,

have there been times when your office has dismissed indictments rather than reveal the identity of the informant?

A Very often.

Q You personally dealt with informants, didn't you?

A Yes, sir. Not often, but I did.

Q For the most part, who in your office was responsible for that type of relationship?

A Ordinarily, the informants were informants of members of the New York County Police Department assigned to the District Attorney's Rackets Bureau and to the District Attorney's Vice Squad, and they had their informants.

Q Did you have several people that you worked with from time to time as informants?

A Yes.

Q Now, you had an unidentified informant before Sam Houston?

A I had an informant whose true name I didn't know for almost a year.

Q Do you know his name now?

A Yes.

Q Is that a name you can mention?

A If I have to, I will do it in camera. I don't see the necessity for it.

THE COURT: If you want to show some relevancy, I will listen at the side bar.

Q There came a time you had a contact with a man who later was identified as Sam Houston, is that correct?

A Yes, sir.

Q Will you tell us now, at the beginning of the relationship, the first contact and how that developed?

A January of 1950 -- 1970, I was in my office speaking with Chief Spahr. I received a telephone call from an individual who wanted to meet me.

Now, this was out of the ordinary because rarely would Gladys permit such a call to come directly to me. For some reason it came through.

I spoke to the individual. He told me that he would like to meet me. The exact conversation at that particular time I can't give you but the conversation was such which whet my appetite. It was more interesting than some of the calls I had received before. It seemed genuine.

He said he would meet me in the parking lot of the Roosevelt Field Hotel -- Roosevelt Field Shopping Center by Macy's, and I said all right eventually.

I told Charles Spahr, and he gave me an argument about going alone. I said that this individual insisted that I meet him alone. Eventually I agreed to have Chief

Spahr follow along.

I got to Roosevelt Field. I used one of the private cars -- I believe one of the assistants who was there. Not a county car and certainly not my car.

I drove it alone. I got out of the car and I waited and very shortly an individual came up to me and identified himself as the one who made the call. And he told me -- he knew quite a bit about me. He told me he is coming to me because he heard I was trustworthy, that I was a fair guy, and he told me when I was president of the State District Attorneys' Association he knew I put through a resolution that law enforcement or the district attorneys would no longer use the word Mafia, rather organized crime, and because of all that he is coming to me.

He told me he had a relative who was an informant for some law enforcement agency. He didn't tell me the relative and wouldn't tell me the law enforcement agency, but he said as a result of a leak his relative was killed. He was mad. He thought there was negligence. He thought it might have been deliberate.

He was coming to me to cooperate with me and he would give me information. He wasn't that much interested in money. He was more interested in the revenge. I told him that I wasn't going to buy a pig in a poke.

I asked him to give me information which would indicate to me some reliability on his part. He did. I just don't remember exactly what it was at that particular time.

#2 He stipulated certain conditions. One, that I would never try to determine his true identity; two, that he would absolutely sign no receipt for any money givento him, and that he would tolerate -- he didn't use the word tolerate, I am paraphrasing now -- he did not want me to submit any vouchers or claims or anything else -- and he was quite knowledgeable in that particular area -- to anybody which would in any way suggest a payment.

I told him: "You are making it impossible for me to pay you."

He said: "That is your problem."

And I said, "Look, we don't put names of informants --" and there was some discussion about that and he told me what I could do with the claim whether his name was on it or not. "If you want me, I'm willing to go," he said, "but these are my conditions."

The conversation lasted about a half hour and I told him he would have to get in touch with me thereafter.

Another one of the conditions was he would no longer meet me in the metropolitan area. I don't know,

I don't remember at this moment, Mr. Bogin, whether he said the State of New York or not. However, he told me because of his position he had been in a position to meet me anywhere that I said almost at any given time. This was quite unusual. I had never heard of it before. And I said that he would have to let me know -- Where can I get in touch with you, that question.

Q Don't call me, I will call you?

A That was it. And I left.

Q Mr. Cahn, what methods had been used to obtain funds for payment to informants?

A As was pointed out, in most instances, Mr. Bogin, the assistant or the detective who had an informant and who paid an informant a sum of money would have a date, payment to an informant, an amount, possibly a case number.

Q By code?

A By code. He would -- or she would sign the claim form and if it was a detective it was countersigned by the assistant district attorney in charge, or me, and then eventually on the bottom line signed by me.

I think I should make it clear that in those instances I would have absolutely no idea who the informant was nor would I ask. The certification to me by a detective that the money was used to pay for an informant was enough.

There was in the Vice Squad and in the Rackets Bureau some backup information in the file as to informants, but I didn't see it nor did I request it, nor did I request the identity of the informant.

Q You said a moment ago that the man who later came to be known as Sam Houston was quite knowledgeable about the process?

A If I gave you that impression, I am sorry. No, he was knowledgeable about submission of claim forms. He wasn't particularly knowledgeable about this particular process which we followed, although I told him about that.

Q You told him at the meeting?

A When we submit claim forms there was no name of the informant on it. It didn't satisfy him.

Q He was concerned about a possible leak?

A That is correct.

Q Parenthetically, Mr. Cahn, if an informant was being paid by a voucher method, was there any checkup or any review of the voucher to verify the authenticity by anybody involved?

A Not by me. I don't believe by the assistant district attorney. The mere certification, as I said before, that an informant was paid $100, $1,000, was accepted by me.

Q You mentioned your signature on the voucher,

that was a perfunctory signature, was it not?

A If I were in the office all claim forms on the bottom line had to be signed by me, yes.

Q You didn't know whether or not these funds had been received or used or anything else, you signed these as a matter of usual administrative responsibility, is that correct?

A That is correct.

Q Just by way of -- about how many documents a day would you be called on to sign?

A Fifty to a hundred.

Q Now, if you wanted Sam Houston as an informant, you had to meet his conditions?

A That was it.

Q You decided you did want him as an informant?

A From the information and from our conversation at Roosevelt Field, it was a guess, but I -- after twenty years, I had a hunch that he might prove to be a reliable source of information.

Again, knowing he wasn't going to testify, but as a reliable source of confirmation of other information we might receive and possibly get information that would be confirmed by other informants --

Q So you satisfied yourself at that time, did

you not, that Sam Houston's information would be worth your while to go to some trouble to get?

A Yes, sir.

Q Did you then consider what method you might use to overcome the problem and meet his conditions?

A The problem of not seeking his true identity was no problem at all. I didn't have to do that. The problem of paying him without submitting a county voucher did present a stumbling block to me and I did give it quite a bit of thought.

Q Did you come up with an arrangement, an idea for an arrangement, to cover that problem?

A I thought w did, yes.

Q Who did you speak to about that?

A The following day I spoke to the Comptroller of Nassau County, Angelo Roncallo.

Q The gentleman who testified here yesterday?

A Yes.

Q What conversation did you have with him?

A Well, I did hypothesize -- I didn't say I've got an informant -- I did give him what is commonly termed a for-instance, suppose.

He told me that he knew of no way of paying an informant without submitting a county voucher. Then I

suggested to him that if I traveled on behalf of the County and traveled on behalf of the National District Attorneys ' Association and received my expenses from the National District Attorneys' Association and used the money to pay the informant without submitting a voucher, would he have or would he know of any legal prohibition or any kind of prohibition at all.

Q Where was this conversation?

A In my office.

Q Was this a usual procedure for you to communicate with Mr. Roncallo by having him come to your office?

A Mr. Bogin, I think that is the first time he ever came to my office as Comptroller of Nassau County.

Q Did you tell him in specific detail how you expected to carry this out or is that the basic substance?

A Pretty much the basic substance.

Q You heard Mr. Roncallo testify yesterday. There seems to be some discrepancy between the two stories; would you say Mr. Roncallo was telling an untruth?

A No.

MR. DRUKER: I am going to object to Mr. Cahn's mind-reading.

THE COURT: He answered no.

Q Mr. Cahn, as between the two, who had thegreater

need to remember the discussion?

MR. DRUKER: I object.

THE COURT: Sustained as argumentative.

THE WITNESS: I didn't finish my answer.

THE COURT: There is not a question pending at the present time.

MR. BOGIN: I am not sure he answered the question.

THE COURT: What question?

MR. BOGIN: Please read the question preceding the last.

(Record read by the reporter.)

(Continued on next page.)

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THE COURT: Next question?

Q You said you had not completed your answer to that question?

A There was further conversation.

Q You related this?

A Yes. Mr. Roncallo said, "Look, what you got from anyplace else is your money, and I don't care what you do with it so long as you don't also claim money from the county. So you can do with it as you wish." But, he said, "If I were you I would keep a record of what you paid this informant, if you paid him."

Q Did you discuss with him what kind of records you might keep?

A No, that was it.

Q Mr. Cahn, did you do any personal research in connection with this question?

A When he said to me this was my personal money, I as District Attorney went to the County law, the County Charter, all of the State law, to determine whether or not there would be any violation on the part of the District Attorney doing something like this, because any one violation would jeopardize my whole career.

Q Did you come to a legal conclusion as a result of these investigations?

MR. DRUKER: I'm going to object. I think we're now, we're invading the jury's province.

THE COURT: Of course it's important the jury is not bound by his legal research, whether it was good or bad, but I'll let him give it. Overruled.

Q Tell us what the result, what your conclusions were.

A I found no law or statute which would prohibit billing the County and an association, if that was my desire.

Q Mr. Cahn, as part of the pattern by which you were going to carry out this arrangement you had in mind, in terms of record-keeping, what procedure did you envision?

A When?

Q From the first date that you spoke with Mr. Roncallo and thereafter.

A I eventually, each time I paid, wrote out an affidavit, but when the idea of the affidavit came to my mind, Mr. Bogin, I just don't really know. It was sometime before the first time I gave any money to Sam Houston.

Q Thereafter--

A I believe.

Q I'm sorry, go ahead.

A I believe that's it.

Q Thereafter the records that you kept were reflected, the records that you kept of the moneys paid Sam Houston are reflected in the affidavits you've described?

A In the affidavits which I signed, which Chief Spahr signed and which Joseph Spinnato signed.

Q What arrangements did you make with Sam Houston, Mr. Cahn, to insure that he would be aware where you would be?

A (No response)

Q How would he communicate with you and tell you?

A There's no way that I was able to communicate with him. I had absolutely no idea where he was or where he would be. He would call me once or twice a week, maybe three times every two weeks, maybe three times a month. He would call me on my private wire, which was a wire that no one answered except me, even if I was in the office but not at my desk, not even Gladys, answered that phone. If I was there and answered it--

Q What would be a typical conversation?

A "Hello, Cahn." I knew who it was.

"You're going anywhere?"

"Yes."

I would tell him where, tell him where I'd be staying, if I knew, if I didn't know he would call back later and find out and he'd say, "I think I could be there. See you there," and that's how the meetings were arranged.

There were times that I left, had already gone, and Gladys would get the call and I would get a call at the hotel where I was from Sam Houston.

Q For the most part, Mr. Cahn, when he said he'd be at the place, he was there, was he not?

A There were occasions when I went to places expecting to see him. He would call and say he couldn't make it.

Q Where did you meet him as a rule?

A Also, with one exception, as was pointed out by Mr. Spinnato, always met him in the hotel suite.

Q On those occasions, was there always someone present?

A With the exception of, I believe, the first two or three times, I met him, either Joe Spinnato, Chief Spahr, or both were there. The one time I didn't meet him we were supposed to meet at a motel in Anaheim, and he cursed me out, calling me every stupid name under the moon because it was in a meeting of the International Association of Chiefs of Police, and I guess every policeman in

the country was attending that convention.

So we drove from Anaheim to Los Angeles, California, and we stood in front of the TWA booth, Joe Spinnato and I. We saw him, walked to a car, he came into the car, and that's where we talked.

That was the only time other than Roosevelt Field I ever saw him outside my hotel room.

Q When you met him on each of the occasions that you met him, he would give you information, would he not?

A No.

Q Very well.

A There were times I would meet him expecting to get information and he would say, "It fell through," or "It didn't happen."

Q How did you choose to remember the information he gave you?

A When I came back I dictated it in the form of what we call a history of case sheet to Gladys.

Q Have you that material here?

A Yes.

Q Did you make any notes while you were speaking to him? Was there any reason for that?

A He didn't want me to. When he left I jotted down little w ods that would bring to mind some of the th ngs

that he told me.

Q Did you always give him money on the occasions when he gave you information?

A No, not the large sums of money reflected in the affidavit. There were times that I met him that I was playing his game. Each time he would demand more and each time I would give him an argument, but there were times when I didn't give him large sums of money, but on each occasion, to the best of my knowledge, I did give him what I call meal money, which was an arrangement that I had made with Sam Houston.

Q What was meal money, Mr. Cahn?

A It was a method of giving him a few bucks extra and it was based on two days' meals for he and an associate which was nothing unusual, and I marked it as witness fees to me, on a voucher.

Q Was this for the convenience of defining it rather than an absolute description of the purpose?

A He was entitled to meal money, as I saw it. Mr. Bogin, there was nothing unusual in, when getting a witness--

MR. DRUKER: I'm going to object.

THE COURT: Sustained. I think you answered the question.

Q Now, how much in these cases was the amount that you gave him for meal money?

A The agreement that we had reached was $40 a day, $20 per person, for two days. There were times when I gave him a little bit more. There were times when I gave him a little bit less. It usually was $80.

Q Did this occur on every meeting with him?

A I would say yes.

Q You've kept a record by virtue of these affidavits of the number of dollars that you gave Sam Houston over this period of time; is that correct?

A The large sums of money, yes.

Q The large sums. How much does that add up?

A $19,750 from 1970 through 1974.

Q That sum came out of the fund we're later going to describe. Will you name the fund, is it the Sam Houston--

A I called it the Sam Houston Fund.

Q We'll come back to the details later, but I would like to ask you, Mr. Cahn, how did you compose the Sam Houston Fund?

A It was made up of moneys that were returned to the County for expenses which they advanced to me and instead of returning the moneys directly to the County,

I held them until I performed a County use for those moneys.

Q Where were they kept?

A They were kept in a blue envelope marked "S.H." in a private closet of my private office, locked, with only two persons having the key, Gladys and myself.

Q The source of the contributions to that S.H. envelope you described came from what?

A Moneys refunded to the County.

Q From what source?

A From the organizations for whom I performed services and went on trips.

Q These were moneys which you obtained by virtue of involving or communicating with the independent agencies and receiving these funds by way of checks?

A That's correct.

Q When you received a check, what did you do?

A Endorsed it, and gave it back to Gladys.

Q What did she do with the check?

A Cashed it.

Q What did she do with the cash?

A Well, if there was an honorarium connected with the check, I kept the honorarium for myself, and most of the time Gladys put the remainder in the envelope marked "S.H." it didn't say "Fund," "S.H."

Q In that way there was a continuous fund of money kept in an envelope from which you drew the payments to Sam Houston?

A Kept toward the end.

Q Did you consider those, the moneys accumulated that way, were County moneys?

A Absolutely. They weren't mine.

Q Did you use them for any other purpose than you have described?

A Not one other purpose. I didn't get a penny of that money.

Q When you took funds from that envelope and paid it to Sam Houston, what do you think you were doing with respect to the county?

A Exerting a county purpose. The county was obligated to pay that informant. That was a legitimate expense of the District Attorney's office.

Q You heard Mr. Christ testify earlier in the trial that he regarded your actions as a short circuit which he accepted and as an alternative to depositing the money into the county and then withdrawing.

MR. DRUKER: I object to the form and substance of the question.

THE COURT: I'm not sure that that's an

accurate statement. We don't have a transcript of it.

See if you can put it in a way --

MR. BOGIN: That's what I recollect, but I defer to you.

THE COURT: See if you can put it in a way that it doesn't involve a possible inaccurate quotation.

(Continued on the next page.)

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Q. Mr. Cahn, with respect to this money,which was in the S.H. Fund, did you have an alternative to put that money into the County and withdraw them, had you chosen to do so?

A Yes.

Q. Would that then have created a problem for you?

A. (No response)

Q. In terms of confidentiality

A. Mr. Bogin had taken those funds and re-deposited them into the County Treasury and then used a prosecuting fund check and cashed it to pay Sam Houston. I would have had to submit a county claim which would have violated my word to the individual with whom I was dealing.

Q. Is that the reason why you chose this method of depositing the funds and paying them out, Mr. Bogin?

A. I kept my word to him.

Q. Now - - I will withdraw it "now"

Coming back to the affidavit, Mr. Cahn, on the occasions when Chief Spahr - are you all right?

A. Yes.

Q. On the occasions when Chief Spahr and Mr. Spinatto and others who were with you, at least as far as Mr Spinatto and Chief Spahr were concerned, when they witnessed the payment of money to Sam Houston, they made an

affidavit to that effect, did they not?

A. Yes.

Q. What did you do with each of those affidavits?

A. Those affidavit were kept in my private closet, in my private office.

Q. Were there any duplicates of those affidavits any where?

A. Not at the time, no.

Q. Is there a reason why you did not make duplicates?

A. Yes.

Q. What was the reason?

A. The security of Sam Houston.

Q. You felt that making duplicates might blow the cover?

A. Just - -

MR. DRUKER: I'll object.

THE COURT: Really, you are testifing a good deal yourself. This is direct testimony.

MR. BOGIN: I earned that, your Honor. I'm sorry if I did so.

Q. Did there come a time when those affidavits were removed by you from the envelop and transported by you?

A. Yes.

Q. Would you describe the circumstances of the

event of that situation?

A. The originals?

Q. The originals.

A. Well, during the election campaign, my trips became a campaign issue and the confidentiality of the trips became a campaign issue and eventually - - I cannot give you a specific date, but eventually I had Gladys make xeros copies of the affidavits and the history of case sheet which was also kept in the private closet. That's the case sheet that contained the information, which was given to me by Sam Houston.

Then, in December of 1974, I was requested by the United States attorney for those affidavits and case sheet and other information. I had decided to consult an attorney, not as attorney before I went down, but as a man who had been head of the organized crime division for the attorney general of the United States, a man, William Hundley in Washington, (PH) who had been a long time friend of mine and with whom I worked. I took the affidavits, the original affidavits, the original history of case sheet and the lists that I had eventually prepared as best I could of monies received from the various organizations and on the evening of December 23, I went to his office in Washington and I had to wait until about 7 o'clock, until we got there and for a couple hours we discussed this entire matter. Mr. Huntley made copies

of everything there and I stayed over night in Washington.

The next morning these affidavits and material, it was in an attache case - - The next morning I was catching what I thought would be the 9 0'clock shuttle back to New York. I went into the men's room and put the attache case down. I also had an over-night suit case with me. When I bent down to pick them up the over-night suit case was there, but the attache case was gone. Frantically I looked around, inside, outside. This was the morning of December 24th. I couldn't find the attache case. I immediately went to the police booth area of the Washington, D.C. police and made a written report of the theft of my attache case.

MR. BOGIN: If your Honour pleases, might I ask for a side bar.

THE COURT: Yes.

THE WITNESS: Might I join in it?

THE COURT: Yes.

(Side Bar)

MR. BOGIN: The next series of questions would relate to the testimony of a witness who's not here in connection with which Mr. Druker has agreed to stipulate, though not as to the relevancy of it, that if the witness were here, a police officer,

would testify that this was a relatively high crime area, that there was substantial thefts of material in the area at that time and place, without, of course, stipulating the true meaning of it. The question of relevancy comes in.

MR. CAHN: And the copy of the report submitted to them.

MR. DRUKER: I object. Number 1, to the admissibility on the grounds of relevancy and materiality. Number 2, I submit it's self-serving. Mr. Cahn was investigated at that time. Indeed, I would be surprised - -if he did not submit a report to back up his contentions that these things were stolen, but they are absolutely not prohibitive as to the issue of when the documents were stolen, it just shows that he says they were stolen.

THE COURT: The fact it was a high crime area, it might not be entirely imaginary.

MR. DRUKER: I'll stipulate the witness from Washington, D.C., will testify. As to the report, I object to that.

THE COURT: He's already testified to that.

MR. BOGIN: He testified to that. What I'm trying to do is lay a basis for the introduction of the photo copies of the affidavits.

THE COURT: Yes.

MR. BOGIN: I object to the introduction of the reports.

THE COURT: You're now trying to offer a report - -

MR. BOGIN: I'm trying to offer the report as a basis for absence of the original.

MR. CAHN: It came in the last trial, your Honour.

MR. DRUKER: That has nothing to do with it. I object.

MR. NEIL CAHN: If he's attacking - -

THE COURT: The testimony that there was a high crime area can be stipulated.

MR. BOGIN: We are so stipulating. I am offering now, testimony that it's a high crime area, in order to substantiate the theft and to support the introduction of copies of the affidavits.

THE JUDGE: That's all right.

MR. BOGIN: As to the originals..

MR. CAHN: I cannot understand your Honor's ruling. I had to make a report to the police department and which was made December 24th. I was indicted in August of 1975. I don't thing that a supposition or an inference or innuendo by Mr. Druker should prevent the introduction of that piece of evidence.

THE COURT: They are entitled to evidence, it's a high crime area. The report you made is not evidence.

MR. DRUKER: Being offered for the truth of its contents.

MR. CAHN: It's kept in the regular course of the business of the Washington police department and if I have to - -

MR. DRUKER: That authenticate it, but as to others - -

MR. BOGIN: I understand your Honor's position at this moment.

Do I understand your Honor to indicate the admitting of the copies in the absence of the originals.

THE COURT: I'm going to receive the copies. The credibility of the explanation is for the Jury.

MR. BOGIN: Will your Honour then permit the explanation in evidence., that is to say the existence of the high crime area, the fact the defendant made a report.

THE COURT: He said he made a report. I'm not going to receive the report in evidence.

MR. CAHN: I have the report.

May I say this, that the report would be acceptable, admissible as a report kept in the regular course of the business of the Washington police department, but I will concede it doesn't make it true.

THE COURT: I've ruled what I'll receive.

MR. NEIL CAHN: If Mr. Druker is attacking the statement that the bag was stolen, I submit the simultaneous report of the stolen bag as probative. of some weight that the testimony is in fact truthful.

MR. BOGIN: They don't care about that.

THE COURT: The fact is in the record. I'm not going to receive the written report.

MR. DRUKER: Might we have a three minutes recess.

THE COURT: Let's wait a few seconds.

MR. DRUKER: Might I have thirty seconds?

THE COURT: Very well.

(Open court)

THE COURT: We'll take a general recess for about five minutes.

(Recess)

(After recess.)

THE COURT: Bring in the jury.

(The jury is in the jury box.)

THE COURT: Mr. Bogin, you may proceed.

MR. BOGIN: Sir?

THE COURT: You can proceed. Go ahead.

MR. BOGIN: Thank you.

May I have your Honor's indulgence for a moment?

(Pause.)

MR. DRUKER: If your Honor pleases, the Government will stipulate that the Washington, D. C. airport, testified about by Mr. Cahn, is a high crime area and specifically the men's room is in a high crime area.

MR. BOGIN: May I suggest that if a witness were subpoenaed and produced here, he would have testified as a police officer in the terminal, that part of the terminal was a high crime area at the time.

THE COURT: I think that is the stipulation.

MR. DRUKER: A police officer of the Metropolitan Police Department would so testify.

MR. BOGIN: And a report would have been made --

MR. DRUKER: No.

THE COURT: All right.

MR. BOGIN: I am not offering the report, just the testimony.

DIRECT EXAMINATION

BY MR. BOGIN: (Cont'g)

Q In addition to the affidavit which has been identified and placed in evidence by Mr. Spahr and Mr. Spinnato, did you also make affidavits as you received funds from the various agencies and paid them -- withdrawn.

Did you also make affidavits concerning payment by you to Sam Houston when you returned after your visits with him?

A Yes.

Q I ask you to look at these documents and see if you can identify them.

A Yes, I can.

MR. BOGIN: I offer these for identification.

THE COURT: Mark them.

THE CLERK: Set of documents marked Defendant's Exhibit J for identification.

(So marked for identification.)

Q Mr. Cahn, what do these documents represent?

A These are Xerox copies of the original affidavits which I signed in reference to payments to Sam Houston on the

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various occasions that I saw him in the various places.

Q You signature appearing on each of those documents, was it placed on the document at or about the time indicated --

A On or about the time.

MR. BOGIN: I offer them in evidence after showing them to Mr. Druker.

THE COURT: Do you want to examine on them now?

MR. DRUKER: I am familiar with the documents. I repeat my earlier objection.

THE COURT: They will be received subject to whatever finding the jury may make as to the adequacy of the explanation for the lack of the originals.

Q Mr. Cahn, at the time when you returned to your office after these visits with Mr. Sam Houston, did you also make memoranda of the results of your visits with Sam Houston?

A Yes, what we call like a history of case sheet.

Q I show you this set of documents and ask you if you can identify these.

A Yes. This is a Xerox copy of the history of case sheet kept by me with the exception of this name on it (indicating). That wasn't putthere by me or anybody else in my office.

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I believe that is Mr. Druker's --

MR. BOGIN: I offer these for identification.

MR. DRUKER: It is not mine, but I have no objection to striking it or deleting it. I don't know whose it is.

THE COURT: Mark them.

THE CLERK: Marked Defendant's Exhibit L in evidence.

xxx (So marked in evidence.)

Q Mr. Cahn, was the original of this set of documents also contained in the lost attache case?

A Yes.

Q What do these documents contain?

A They contain a resume of the information which Sam Houston gave to me during the visits we had in the various hotel suites throughout the country.

MR. BOGIN: Any suggestion, Mr. Druker?

MR. DRUKER: Same objection as to the other --

THE COURT: Same ruling.

MR. BOGIN: These are now received in evidence. I offer these in evidence.

THE COURT: Those have been marked already.

Q Mr. Cahn, you made a record of the monies received by you. I ask you whether you can identify -- withdrawn.

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I show you Defendant's Exhibit H in evidence and ask you if you can tell us what that is.

A Mr. Bogin, this is not in evidence.

THE COURT: What is this?

MR. BOGIN: I don't think it was --

THE COURT: Let me look at it.

(Pause.)

THE COURT: Get the next number on this.

THE CLERK: Six-page document marked Defendant's Exhibit M for identification.

xxx (So marked for identification.)

MR. BOGIN: Thank you.

Q Now, Mr. Cahn, will you describe this and tell us what it is?

A Defendant's Exhibit M for identification is a list that I prepared sometime in October of 1974, to the best of my ability, of monies that I received from the various organizations throughout the years from 1970 through 1974: the National District Attorneys' Association, the National College, the Arizona County Attorneys' Association, Metro D.A. Conference, National Institute on Crime and Delinquency and Police Standards.

This information was compiled at one time, sometime in October of 1974, from the very best of my

recollection and the records that I had available. They were not complete. They were not accurate because they were the records that I submitted to the United States Attorney and to the Controller of Nassau County and kept by me.

Q Did you retain the originals?

A The originals of this was also in the attache case which was stolen in Washington, D. C.

MR. BOGIN: Any objection, Mr. Druker?

MR. DRUKER: Yes. If it is not complete and not accurate, I don't see what materiality it has.

THE COURT: Let me look at it.

When you say it's not accurate, are there any things on here not supported by the records or by your recollection?

THE WITNESS: Your Honor, there are amounts on there which are more than should be and there are records of payments that were not that I received from other organizations that did not go on to this list, but since this list was prepared I have in some way compiled what I believe is the accurate picture. But I absolutely need this in order to do that.

THE COURT: If you say some of the amounts are larger than they should be, I wonder to what extent

that is misleading. I think you'd better follow that up, Mr. Bogin.

Q Mr. Cahn, the list you have before you was prepared at one time, was it not?

A Yes.

Q Have you since examined your records to ascertain the accuracy of that list?

A Records that were supplied to me at -- within the last year.

Q If you had this list before you and the official records you now described, could you make this list accurate?

A Yes.

Q Could you produce an accurate list without reference to the one in front of you?

A No.

MR. BOGIN: I offer this list in evidence, your Honor, subject to connection.

MR. DRUKER: I object.

THE COURT: The extent it may overstate the payments, I think its admissibility is doubtful.

If you can find what the overages are and add them to it, I will receive it at that time.

MR. BOGIN: May we have a sidebar for a moment?

THE COURT: All right.

(The following took place at side bar.)

MR. BOGIN: Solely in the interest of time economy, I thought I would offer it in evidence and have him correct it by offering the additional materials.

Of course we can ask him to identify each item of inaccuracy and make the corrections right now, but we would put in a lot more time. If we produced a second list --

THE COURT: What is this, Cahn duplication?

MR. DRUKER: That is my note.

THE WITNESS: Let me explain what I mean here. Here, Atlanta, is $286.57. I received $100 honorarium which was included and shouldn't have been. This same thing appears here (indicating). Here, $560.27, also Spinnato --at first I thought that the 560.27 included by Spinnato -- I kept $100 of that but I now know another $460 should go on there.

MR. DRUKER: Why doesn't Mr. Cahn make up a corrected list? Why take a list that is inaccurate and put in a corrected list. I have no objection to the corrected list.

MR. CAHN: I submit to you, in view of what

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took place thereafter, the fact that I made known to the United States Attorney's office that this was an inaccurate list and what took place in the United States Attorney's office thereafter, I believe that this list as it is is very material to the case.

MR. DRUKER: May we hear further on that offer?

THE COURT: Excessive charge of more than $100--

THE WITNESS: Yes, this does not belong in here. I explained why. There are six items here, I believe, of $100 that should not be on here. Arizona County Attorneys' Association, I did not know until Mr. -- what is his name? Mr. Briggs testified -- that included in the $443 was $135. I kept that. That shouldn't be in there. This shouldn't be in there at all because it was a different trip at a different time.

This is okay (indicating). And this is okay (indicating).

MR. DRUKER: Why not make up a corrected list?

THE COURT: As to the present state of the case, I don't know why this particular list is admissible if it is not right.

MR. BOGIN: It may be relevant at a later time. Simply following in sequence --

THE WITNESS: May I explain this? I am going on the basis of the last trial. It was claimed that this was the list given to the comptroller and it added up according to the comptroller to $19,768, which was wrong.

Then they showed other trips that I took which amounted to how much, Mr. Druker? About $3,000-$2500, which they indicated went into my pocket.

If the list is correct with all the trips included and all of the explanations, it will show that $19,750 wasn't received and what I testified before the Grand Jury that was owing to me, three to four hundred dollars, is absolutely accurate.

THE COURT: I don't follow all this but it's not accurate and I will sustain the objection at the present time.

See if you can correct it overnight.

MR. BOGIN: What we have to do is offer a corrected copy.

THE COURT: Annotate it.

#4/2 (The following took place in open court.)

MR. BOGIN: I believe K has been marked in evidence.

THE COURT: Exhibit what?

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MR. BOGIN: K.

THE COURT: That should be marked in evidence, Exhibit K.

MR. BOGIN: At this time, in order to complete the record, I offer in evidence the affidavits represented by Defendant's Exhibit H for identification and Defendant's Exhibit C for identification.

THE COURT: Those will be received subject to the remark I made before, overruling Mr. Druker's objection, and leaving it to the jury to determine the adequacy of the explanation for the absence of the originals.

THE CLERK: Defendant's Exhibit C and Defendant's Exhibit H marked in evidence.

xxx (So marked in evidence.)

DIRECT EXAMINATION

BY MR. BOGIN (Cont'g):

Q With regard to Sam Houston, Mr Cahn, can you tell us what he looked like?

A Five-eight, dark, dark hair, medium build.

Q Did he speak with an accent?

A No, not an accent, an intonation. To me it appeared an Eastern intonation.

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Q Did you participate in securing or arranging to secure a composite picture of Sam Houston?

A Yes.

Q I show you Defendant's Exhibit I for identification and ask you whether this is a fair representation of Sam Houston as you remember him?

A It is a very fair picture of the composite that was drawn.

THE COURT: That was not the question.

A And it is a fair representation of Sam Houston. I am sorry, your Honor.

Q Besides Mr. Spahr and Mr. Spinnato, were there other people that accompanied you when you saw Sam Houston?

A No, sir. Well, not when I saw Sam Houston. Nobody else accompanied me. There was one occasion when somebody else saw him.

Q Who was that?

A A man by the name of Lee Middleton. He is one of the executives in the District Attorney's Office of Flint, Michigan.

Q What were the circumstances in which he saw Mr. Houston?

A I was talking to Sam Houston in my hotel suite in San Francisco and Mr. Spinnato was downstairs. He wasn't

in the room.

There was a knock on the door and I just presumed it was Joe Spinnato. When I opened up the door, Lee Middleton walked in, Bob Leonard who was the county prosecutor, and there may have been somebody else with them, I don't remember.

With that, Sam Houston jumped up and walked out. All I said is, "This is Sam," and he left.

That was the only time, to the best of my knowledge, that someone else ever saw Sam Houston in my hotel room.

Q On the question of value of Houston's information, did you communicate to Mr. Spahr or Mr. Spinnato everything that Mr. Houston told you at any time?

A No, I didn't communicate to them. They were there and I may have on the occasions when Chief Spahr wasn't around spoken to him about information received, whether I thought it was good, bad, or indifferent.

Q When you saw Sam Houston in Mr. Spinnato's presence -- withdrawn.

Was Mr. Spinnato present all the time when you were talking with Sam Houston?

A No, he was not.

Q Describe the circumstances.

A They did[illegible]get along and he was in and out during much of the conversation on some occasions.

The man I communicated to insofar as information which I thought was valuable and interesting was Detective Sergeant Lang who may have been on the trip when Sam Houston was there but never saw Sam Houston, never told of his existence, he was just asked information. He was the head of the Rackets Bureau in the District Attorney's Office assigned by the Nassau County Police Department.

Q Would then Mr. Spinnato -- withdrawn.

Was Mr. Spinnato then privy to all the communications you had with Sam Houston?

A No.

Q When he accompanied you on the trips was he privy to the communications when he was there, all the communications, when he was there?

A I would say most of it, but as I said, during many of our meetings he was in and out. They didn't get along.

Q Now, when you traveled in areas such as San Francisco, during which you had occasion to go to Reno, did some of these occasions occur on weekends? In other words, did you go from San Francisco to Reno on the weekend?

A I don't know whether they were on weekends, but

many of the trips I made included weekends, Mr. Bogin.

Exactly which trips and where I was at any particular time, I don't know, but they included weekends.

Q On some of these weekends when you went to Reno or Las Vegas, did you go for pleasure?

A No. It had nothing to do with weekends. There were times, Mr. Bogin, if we were in San Francisco and we finished work three or four o'clock in the afternoon, and we were going home the following day, we might have gone for pleasure for that one evening to eat, to see a show, to do some gamblingfor that one evening.

I don't believe on any of those occasions that Chief Spahr was ever with us.

Mr. Spinnato may have been and Detective Sergeant Lang may have been,but that was just when our day's work was over when we came back. There were occasions when we did that, we never even bothered checking into a room at a hotel, it was just not that, it was going there and returning.

The other occasions when we went from San Francisco to Reno were for the purpose of expecting to see or seeing Sam Houston or for some other county business.

(Continued on next page.)

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Q Did you gamble at Reno and Las Vegas?

A I certainly did.

Q Tell us about that, how much did you gamble?

A It would all depend upon whether I was winning or losing.

Q Would you describe yourself as a big gambler?

A No, I'm not a big gambler. I'm not a tiny gambler. During the course of 1970 -- I've never signed a marker. I never had a gambling debt, but I gambled. I cashed checks in Reno, perhaps in Vegas.

MR. DRUKER: I object. I think the previous question was how much he gambled. Now we're off on another dissertation.

THE COURT: Keep it as precise as you can, Mr. Bogin.

The witness; Let's wait for the next question.

MR. BOGIN: I was asking him to describe the circumstances as to his gambling. I think he was doing that.

Q Mr. Cahn, how often did you gamble during this period that we're concerned with, that is, from 1970 through 19--

A If I was in Reno or Las Vegas, Mr. Bogin,

I gambled.

Q What were your usual stakes, Mr. Cahn?

A My usual staks was $5 or $10 and if I was winning and winning big there were occasions when I would bet a hundred, but my average losses over five years were about $300.

Q If you were playing with your own money what stakes would you play with?

A You mean if I was losing?

Q Losing--

A $5 or $10.

Q If you played for more than that, what was the occasion for that?

A If I was winning I would bet higher and I would-- I would sometimes cash a check for $1500. That was in reference to the complimentary rooms and as soon as I got back to Mineola, that check had to be made good because when I wrote it there were not sufficient--

MR. DRUKER: I'm going to object again, your Honor.

THE COURT: It's a very general question now about the circumstances of his gambling. Mr. Bogin wants to ask it. I'll overrule the objection.

Q Mr. Cahn, you speak of cashing checks.

A Yes.

Q When you cashed a check in either of these places, did you usually have the funds in your own account to support that?

A The funds were not in that checking account. The funds were -- as soon as I returned or money was sent to cover the amount of the check drawn.

Q Did you ever cash a check for the purpose of paying off a gambling obligation?

A I never had a gambling obligation. I never had a gambling debt. I never signed a marker. I never owed for a gambling debt.

Q What was the purpose of cashing checks, Mr. Cahn?

A Mr. Bogin, there were times after a while that each of the parties accompanying me received complimentary rooms in Reno, sometimes in Las Vegas, as a result of my friendship with the former District Attorney of Reno, Nevada, and present senator William Ragio(ph). However, I was asked-- there are four rooms complimentary. I was asked to gamble and I did. I was going to gamble anyway. So I cashed these checks and -- but in no way did these checks reflect the losses that I had or winnings -- there were times that I did win. There are times that I did lose, but every time

I cashed a check, that check was immediately made good, either by sending the money back, in most instances, as soon as I returned, paid it back, into my checking account.

Q Gambling is not legal in the State of New York, Mr. Cahn?

A (No response.)

Q I say, gambling is not legal in the State of New York, but it is legal in places where you did gamble?

A Yes.

Q What were your views regarding your responsibility with respect to non-legality in New York and--

A It had nothing to do with it. I was in Nevada where gambling was legal. The only thing I played was blackjack. I gambled.

Q You play cards at home occasionally?

A I sure do.

MR. BOGIN: Might I have your Honor's indulgence for a moment.

THE COURT: Yes.

(Pause)

Q Now, Mr. Cahn, on the occasions when you traveled at the instance of the National District Attorneys Association to lecture or to attend board meetings, and/or at the instance of the National College of District

Attorneys for the same purpose, was the County obligated to make any payment or reimburse you for any of those expenses?

A Board meeting, yes, if I received prior permission, but other than that, to lecture and to participate in committee meetings, no. It's not a question of obliging; they wouldn't have paid.

MR. DRUKER: I object to that.

THE COURT: Overruled.

Q Whenever you could, Mr. Cahn, did you attempt to coordinate your trips for the County with your trips for the private entities?

A This was the arrangement that I thought of for the purpose of paying Sam Houston. Wherever and whenever possible, if I was invited to speak or participate in some seminar for the National District Attorneys Association, the National College, the Task Force, the National Legal Data Center, or whatever organization would invite me to come, if I could arrange at the beginning interviews with prospective undercover agents to go into the Nassau County Jail, I would try to arrange it at that time. I would deliberately try to arrange it at that time because if I did not have county business, Mr. Bogin, there was no way I could get an advance from the County's prosecution fund. You were not-- If I wanted to go on a personal trip

I was not permitted to take that from the County prosecution fund.

Q So that your intent at all of these times was a continued effort to coordinate these trips?

MR. DRUKER: I object. Mr. Bogin is testifying.

THE COURT: I don't think on direct examination it's proper for you to summarize or rephrase the witness's testimony.

MR. BOGIN: Once again, your Honor's indulgence?

THE COURT: Yes.

(Pause)

Q Mr. Cahn, in a general sense, I would like you to describe for us the exact mechanics of receiving reimbursement from the independent agencies and the manner in which this reimbursement was converted into contributions to the S.H. fund and subsequent disbursement.

MR. DRUKER: Objection.

Mr. Cahn testified to that at great detail earlier today.

THE COURT: I'll let him state it again if Mr. Bogan thinks it's useful.

A If I received an invitation to speak on behalf

of an organization and I would then find out whether or not it was possible for me to arrange county business at that time, it was a jail investigation, eventually there was a vice squad investigation, eventually there was a homicide investigation. If I could do that, I would arrange it at the very same time. I would then take an advance from the prosecution fund. I would use the money from that advance to pay for my trip. Sometimes a trip would be a week long and would go over $1,000, depending upon who went with me and for how long it was.

I would use the money to pay for the expenses of the trip. When I returned home I would file a claim with the county. I could not file a claim and say "Advance for trip to San Francisco with Joseph Spinnato and Detective So-and-so." The rules and regulations of the County required me to enumerate what the expenses for the advance was; so I would have to say, "Hotel room, meals for Mr. Spinnato," and so forth. Ordinarily, in most cases, that claim was made out in the name of the prosecution fund.

At the same time, perhaps, a day later, I would also send a letter to the National District Attorneys Association, the National College, or whichever agency

invited me to participate in their program, and I would list my expenses. Eventually a check was delivered to the District Attorney's office, made out to the prosecution fund. That check was deposited, so that the prosecution fund account was up to snuff, it was audited all the time, when the money and therefore my loan, my advance from the prosecution fund, was now paid off. When the check came in from the National District Attorneys Association, the Nation College or whatever organization, for which I was -- in which I was participating, I would, Gladys would bring it in, I would endorse it, if there was an honorarium attached to it, a fee, she would give me that fee in cash, $100, $135, whatever it was. The balance of that belonged to the County.

MR. DRUKER: I'm going to object to this.

THE COURT: You were asked what you did; you weren't asked your interpretation, Mr. Cahn.

A (Continuing) The balance of that was then held in an envelope marked "S.H." standing for "Sam Houston," to be used for the payment of the informant, Sam Houston.

When I went to see Sam Houston in most instances, if I expected to see him and I expected to give

him money, I would take cash out of the Sam Houston envelope, put it in my wallet, and would pay him when I saw him. I didn't necessarily pay him all of the money that I took out. There were occasions, perhaps, that I paid him more than I took out, and that was out of my own money, until I got back and reimbursed myself from the Sam Houston fund.

This procedure was followed until almost the very end, when I was running out of money in the Sam Houston fund. I never submitted a claim to the county for a payment of Sam Houston, never.

MR. DRUKER: Objection, Mr. Cahn was asked what he did, not what he didn't do.

THE COURT: All right.

I guess the answer is complete.

What next, Mr. Bogin?

MR. BOGIN: Pardon, sir?

THE COURT: What's the next question?

Q The next question is, did you ever submit a claim to the county for the payment for Sam Houston?

A I said no.

Q If there were a surplus in the hands after the trip when you saw Sam Houston, what would you do with the surplus?

A Put that back into the Sam Houston fund when

I returned. If I took $750 and gave him $500, $250 was placed back into the Sam Houston fund when I returned.

Q How did that actually work? Did you put it in yourself or did you give it to Gladys to put in?

A Both.

Q If you were short, that is to say, if you spent more than you expected to pay, what would you do then?

A Go to the Sam Houston envelope, get the money that I had laid out, reimbursement.

Q Mr. Cahn, I place before you (handing to witness) Government's exhibit in evidence 1 and 1A. I ask you to look at those, please.

Will you tell us what those exhibits reflect.

A Exhibit 1 reflects a trip made to Chicago by Assistant District Attorney Joseph Spinnato and myself for the purpose involving investigation of D.A. racket probe case 50-23. I don't recollect that, and S.P.15, which reflects to me Sam Houston.

Q When was that?

A On November 10th. Thereafter, continued to San Francisco, where we met Detective Sergeant John Lang, in reference to a homicide, and a conspiracy to commit homicide by -- in reference to a meeting with an informant whose identity was changed, and whom we moved from New York to

San Francisco.

Q Did you tell us-- Was this in Chicago?

A No, the meeting--

Q County business was where?

A Both in Chicago and San Francisco and the meeting in Chicago is where I met Sam Houston for the very last time, by the way, and the meeting with the other informant and Detective Sergeant John Lang took place in San Francisco.

Q Did you also go to Chicago on behalf of the National College?

A Yes. Government's Exhibit 1A indicates that I went to lecture on behalf of the National College of District Attorneys, an innovative method we used in the investigation of organized crime.

Q Did you lecture at the National College at that time?

A I did and--

Q Did Mr. Spinnato, too?

A Mr. Spinnato did.

Q I take it from this Mr. Spinnato accompanied you on this trip.

A He accompanied me to Chicago and to San Francisco.

Q Did you submit a claim form to the National College with respect to this trip?

A Yes, I did.

Q May I see it?

A (A document is handed to Mr. Bogin by the witness.)

Q Does your signature appear on the foot of this claim form?

A Yes, it does.

Q Did you read it before you signed it?

A No, I didn't.

Q Does Mr. Spinnato's signature appear on another claim for relative to this-- Sorry, I withdraw it.

Did you stay at a hotel, Mr. Cahn, during this visit to Chicago?

A Yes.

(Continued on the next page)

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Q Did you submit a claim form for your hotel stay?

A In Chicago, to the college?

Q To the college.

A No.

Q Why didn't you submit a claim for the hotel?

A It was complimentary.

Q You were also on business for the County in Chicago, as you testified?

A Yes.

Q Did you submit a bill to the County for your hotel stay in Chicago?

A No.

Q What was the reason for that?

A Complimentary.

Q Now, you went to Chicago after this meeting for the National College -- you went to San Francisco?

A That is correct.

Q Did you submit a bill for your air fare from Chicago to the National College?

A Yes.

Q Did you submit a bill to the County for the payment of your air fare to San Francisco?

A Yes, I did.

Q You received monies from the County for

reimbursement of your air fare -- I'm sorry, the National College?

A Yes, I received a check.

Q How much was it?

A $277.73.

Q What did you do with the money?

A $135 I kept as my honorarium which was listed here, and $142.73 in cash was returned to the County of Nassau.

Q How did you return it? What were the mechanics?

A Gladys types out three receipts, three forms, sends the money in, and I guess a form comes back to the District Attorney's office, but a receipt eventually comes back to the District Attorney's office.

Q Are you fully familiar with that machinery?

A No. Generally, I know what happens.

Q Who did it for you?

A Gladys.

Q Have you seen the receipts from the County which result from the repayment of this sum?

A Yes, it is in evidence.

Q While we are waiting for this piece of paper, Mr. Cahn, did Mr. Spinnato submit a bill for the air fare

to Chicago to the National College, to your knowledge?

A Yes. I believe it is 1-B.

Q I show you Government's Exhibit 2-A in evidence and I ask you if that refreshes your recollection.

A Excuse me.

(Pause.)

A Yes, Mr. Spinnato submitted a similar claim to the National College.

Q Did he submit a claim for hotel expenses in Chicago?

A No.

Q What was the reason for that?

MR. DRUKER: I object to the mindreading called for.

THE COURT: Overruled.

A His room was complimentary.

Q Do you know whether Mr. Spinnato received a check resulting from his claim for reimbursement to the National College?

A Yes.

Q How much was that?

A $277.73, exactly what I received.

Q Do you know how that money --

A I gave Mr. Spinnato $135, the honorarium, and

$142.73 was put down with my $142.73 and that cash was returned to the County Treasurer pursuant to the receipt that is shown in evidence.

MR. BOGIN: If the Court please, we must wait for someone to find the item in evidence.

May I have your Honor's indulgence?

(Pause.)

Q Mr. Cahn, I ask you -- withdrawn.

May I have this document marked for identification?

THE CLERK: One-page document marked Defendant's Exhibit N for identification.

(So marked.)

Q Mr. Cahn, I show you Defendant's Exhibit N for identification and ask you whether you can identify it.

A Yes, I can.

Q Would you tell us what that is?

A That is the original copy of the County Treasurer reflecting the payment of the $285.46. It is the original of the copy that is already in evidence showing receipt of payment December 9, 1974.

MR. BOGIN: After showing it to Mr. Druker, I intend to offer it in evidence.

MR. DRUKER: It is in evidence.

MR. BOGIN: This one is not.

THE COURT: Let me see it.

MR. DRUKER: If it is the Defendant's purpose to have two of them in evidence, no objection.

THE COURT: Since we had difficulty reading the receipt on the bottom and this appears to be an original, I will permit this to be marked.

MR. DRUKER: Can it be substituted to avoid confusion?

MR. BOGIN: That would satisfy me.

THE COURT: Suppose we withdraw the other --

MR. BOGIN: What is the designation of the other one?

MR. NEIL CAHN: A. It's A.

THE COURT: Well, maybe Exhibit B was another copy. Let's have Exhibit N stand in place of whatever exhibit it is.

THE CLERK: Should we leave it as Exhibit N?

THE COURT: Yes.

THE CLERK: Defendant's Exhibit N marked in evidence.

(So marked in evidence.)

Q Now, Mr. Cahn, on a prior occasion relative to this trip to Chicago, did you testify in reference to the

monies you received?

A Yes, I did.

Q Do you recall what your testimony was on prior occasions?

A Yes. I was under the impression I had kept not only the $135, but also the $142.73, and I so testified.

Q Now, have you examined these exhibits now and odes that refresh your recollection as to the quality of your earlier testimony?

A Yes. I testified previously that I thought I was owed that money and therefore kept it but I was incorrect. I had returned it to the County. I just didn't remember it. I didn't keep the money.

Q Now, the fact that you returned the money, would that not have opened the door to some revelation as to Sam Houston's identity?

A I don't understand the question.

Q The question is withdrawn.

Was this the last time you saw Sam Houston, on this trip?

A The last time I saw Sam Houston.

Q Did you have any conversation with him on that occasion?

A Yes.

Q Tell the Court and jury what your conversation was?

A I told him what had taken place and I begged him to make himself known and the amounts of money received, the circumstances of our meeting, and all related matter.

Q What did he say to you?

A Deleting certain words, he told me it was his life on the line and I should go to hell.

Q Have you ever seen or heard from him since?

A No, sir.

Q Mr. Cahn, I ask you, in reference to the certification that you signed on Government's Exhibit 1-A, whether you have willfully, intentionally, fraudulently, or illegally in any wise made any representation which was untrue, to the best of your knowledge?

MR. DRUKER: I object. It calls for a conclusion which is the jury's job.

THE COURT: I think the legal question is included in it and I don't think that is a proper question.

MR. BOGIN: May we have a side bar?

THE COURT: Let's see the exhibit at side bar.

(The following took place at side bar.)

MR. BOGIN: It is simply a matter of form.

I intend to ask the same questions with respect to each of the certifications. I would like to be sure we agree as to what is or is not admissible with respect to the declaration --

THE COURT: It is a rather shotgun question.

MR. DRUKER: It's like saying: Did you commit mail fraud.

THE COURT: "I further certify other funds are not available and I am not receiving reimbursement from any other source."

MR. BOGIN: There will be other certifications which will have another connotation. I am trying to regularize the question so we don't have to come back with respect to the contents. What I am doing here is to offer a proposal that we have a standard form of question which will be acceptable to all parites and capable of being asked in each case.

MR. DRUKER: Did you believe that the certification was false at the time you made it.

MR. BOGIN: Something like that.

MR. DRUKER: That is a fast and --

MR. BOGIN: Were there any funds available and --

THE WITNESS: Your Honor, with all due respect,

I testified at the time I made it I didn't read it, but I am reading it now and I don't believe it is false.

MR. BOGIN: Your Honor, we are now at 4:30 or 4:28. I intend to conclude with this count if that is agreeable with your Honor and ask for a recess until tomorrow.

THE COURT: We can do that.

(The following took place in open court.)

BY MR. BOGIN:

Q Will you please read the certification on Government's Exhibit 1-A aloud?

A "I hereby certify that the above including attached documents is true and correct. If mileage is claimed I certify that I was unable to obtain transportation with anyone else from my office due to the nature and circumstances of my official duties. I further certify thatother funds are not available and I am not receiving reimbursement from any other source."

Q Mr. Cahn, were other funds available with respect to this trip?

A No other funds were available from the County of Nassau or any place else.

Q Were you receiving reimbursement from any

other source?

A No.

Q Was any part of your certification willfully false or misleading?

A No.

MR. DRUKER: I object to the form of the question.

THE COURT: That is what we covered at sidebar. I will permit it.

A No, sir.

MR. BOGIN: If the Court please, may I ask now we terminate until tomorrow?

THE COURT: We are pretty near 4:30. I guess you will be getting to another [illegible], so I will excuse the jury until tomorrow morning at ten o'clock.

Same admonition. Do not talk about the case and don't talk to anybody in the courtroom. Do not read anything about the case. All right.

(The jury left the courtroom.)

MR. N. CAHN: Your Honor, I may have been mistaken, but the other day I thought that Mr. Druker was going to concede that a complaint -- if the police officer from Washington, D. C. were called he would testify that a report was made.

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Now, I am not arguing whether or not your Honor should permit the report into evidence, but the fact a report was made in view of your Honor's instructions to the jury as to how much weight they want to give the copies based upon the explanation of Mr. Cahn as to what happened to the originals, I think is important and I would, if Mr. Druker does not concede, have to call the police officer as I did in the last trial.

MR. DRUKER: Mr. Cahn misunderstood. I conceded that the report was made and what I remarked on was the admissiblity --

THE COURT: Mr. Bogin so stated. Mr. Bogin went beyond what we agreed to and I let it stand.

MR. DRUKER: If it is deemed admissible I will say so, Mr. Cahn.

THE COURT: It was stated as part of the stipulation that there was a report made.

MR. CAHN: Unless I am sadly mistaken, I think at the time when Mr. Bogin asked Mr. Druker for the concession about the high crime rate in that particular area he also asked for the concession that the report was made and if I am not mistaken, your Honor, because I was watching him, Mr. Druker said

"No." If I am mistaken --

THE COURT: Are you getting these minutes?

MR. DRUKER: Yes.

THE COURT: Let's read the minutes and see.

MR. CAHN: I would appreciate it. If I am wrong, I apologize.

MR. DRUKER: I rememb er what Mr. Cahn is referring to. I did not say no, there was no report, I said no, that is outside the area of the stipulation and that is the fact. If the Court ruled otherwise--

THE COURT: Let's wait for the minutes.

MR. CAHN: Thank you, your Honor.

(A recess was taken at this time to Tuesday, May 11, 1976, at 10:00 A.M.)

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I N D E X

Witness	Direct
WILLIAM CAHN	203

Defendant's Exhibits		For Ident.	In.Evid.
I	Photograph	130	
J	1-page document	131	134
C and H	Affidavits		263
K	Set of documents	254	
L	Xerox copy of case sheet		256
M	6-page document	257	
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U.S. DISTRICT COURT E.D. N.Y.
MAY 21 1976
TIME A.M. 10
P.M.

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA, :

-against- : 75-CR-645

WILLIAM CAHN, :

Defendant. :

----------x

United States Courthouse
Brooklyn, New York

May 11, 1976
10:00 o'clock A.M.

B e f o r e :

HONORABLE ORRIN G. JUDD, U.S.D.J.

I hereby certify that the foregoing is a true and accurate transcript of my stenographic notes taken in the proceedings.

Official Court Reporter for the
U.S. District Court
Eastern District of N.Y.

SHELDON SILVERMAN
OFFICIAL COURT REPORTER

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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: JAMES DRUKER, ESQ.
-and-
PETER GOLDMAN, ESQ.
Assistant U.S. Attorneys

WILLIAM CAHN, ESQ.
Pro Se

-and-

NEIL CAHN, ESQ.
-and-
HAROLD BOGIN, ESQ.
Attorneys for Defendant

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MR. BOGIN: If your Honor please, you suggested yesterday that the list we had intended to offer and which had some confusing entries might be annotated and thereby corrected and possibly offered.

We've gone over that material and rather than do that we've simply recalculated and re-enumerated the information and that information will be presented to this Court and jury by the testimony of the defendant; however, in order to clarify it and make it evident to the jury, we have commission to either -- Well, we were going to use the blackboard, but we're suggesting we use the sheets and show the data as it's testified to by the defendant so that finally the jury will have the entire picture before them and they will be capable of doing it themselves.

That's proper.

If there's no objection on your part.

THE COURT: A sort of summary testimony?

MR. BOGIN: Essentially summarize each count of the case.

MR. CAHN: Pursuant to your request yesterday, I give you the deposition which you requested to read.

MR. BOGIN: Mr. Fiore's deposition.

THE COURT: Who were present as counsel at this depostion?

MR. CAHN: For Mr. Fiore?

THE COURT: For the government?

MR. CAHN: No one.

THE COURT: This is not a deposition, then.

MR. CAHN: No, no -- It is a deposition to me. I thought that's what you wanted.

THE COURT: A deposition is testimony which has been taken outside the Court, examination, cross examination.

MR. CAHN: No, this is an affidavit sworn to by Mr. Fiore and represents the basis of my request for the information that I asked for pursuant to the subpoena. That is the basis of my request. I thought this was what --

THE COURT: I understood it was a depositon.

MR. CAHN: I'm sorry. I didn't mean to --

THE COURT: Whose handwriting is this?

MR. CAHN: My handwriting, but sworn to, signed on each page by Michael Fiore and sworn to before a Council of the United States Ambassador in Rome, Italy. It has reference to specific information which, I believe, is relevant to my state of mind and to the procedures which law enforcement follow in dealing with informants.

THE COURT: What were your dealings with Mr. Fiore

during this 1972-74?

MR. CAHN: Between 1970 and 1974 we turned over Michael Fiore, the Nassau County District Attorney's office turned over to the United States Task Force in this district this informant because of his demand for $50,000, which we didn't have. the Task Force used him and according to Mr. Druker's statement, paid him exactly -- approximately $46,000.

MR. DRUKER: Just for the correction, again, the Task Force didn't pay him one nickel. the Bureau of Narcotics and Dangerous Drugs, without the knowledge and consent of the Task Force, paid him money.

MR. CAHN: I stand corrected, Mr. Druker. I don't mean to -- However, there did come a time when there was the services of Micahel Fiore required at a trial. We were requested because of what we were told, his sudden desire not to cooperate, to go to Rome and see if we could help the Federal Government in getting him back, which we did.

When he returned, a method of payment for Michael Fiore was used by the Federal Government which was not in accord, as this affidavit indicates, with normal procedures, but was a method of paying an informant, innovative, as I claim was the basis of my actions in this case and I want to say that, therefore, it's not

unusual and it wasn't limited to me or to my office to use innovative methods in dealing with informatns when necessary and that's why I requested the information as to the extent that this Michael Fiore was paid --

THE COURT: I don't want to get into an argument about how the BNDD has operated. That's been the subject of longSEnate hearings. It's cost the career of a good leader and I think it's beyond reason to expect to go into that.

MR. CAHN: Your Honor, I'm not concerned about the $46,000 paid by the Bureau of Narcotics to Michael Fiore. I am concerned about the method of travel expense that was paid to Michael Fiore by the Task Force in this district showing that in and of itself it was innovative, it was different --

THE COURT: Mr. Druker says there wasn't anything paid by the task force; that there's travel expenses paid by the marshalls.

Have you been able to get any information from the marshall?

MR. DRUKER: I'm sorry, I'll take care of that this morning. When Mr. Fiore would come in, he would be given a travel voucher to fill out. He would sign the travel voucher, list the dates of his travel, his dates of attendance here in the Eastern District and go

down to the marshall's office. Pursuant to that, a check would be issued as to any other witness.

THE COURT: Have you copies of the travel vouchers

MR. DRUKER: No, that's something we wouldn't retain.

THE COURT: Talk to the Marshall's office. I'm not reading an ex-parte affidavit. I don't see why I should.

MR. CAHN: All I'm saying is -- Forgive me, your Honor -- I thought that was what you requested in order to make a determination on Mr. Druker's motion to quash the indictment.

MR. DRUKER: Subpoena.

MR. CAHN: To quash the subpoena.

THE COURT: I've denied the motion of requesting him; that he get the information from the Marshall's office. We'll leave it that way.

Bring in the jury.

(Jury enters court room.)

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300 THE COURT: Good morning, ladies and gentlemen.

We were on Mr. Cahn's direct testimony and, Mr. Bogin, you may proceed with your questions.

W I L L I A M C A H N , called as a witness, having been previously sworn by the Clerk of the Court, resumed the stand and testified further as follows:

THE COURT: You were sworn yesterday and you are still under oath, Mr. Cahn.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. BOGIN: (Cont'd)

Q Mr. Cahn, there were some things that we had before us yesterday which required some clarification.

I'm going to tkaeyou back to the early part of your testimony for a few moments, if I may.

There was a discussion about the complete limitation of your work from 1950 as a district attorney, until the term expired and, I believe, there was an innacuracy.

Would you care to explain, please?

A Yes.

I told you that I had a practice that I worked

for a law firm from June of 1949 to January of 1950, when I first entered the district attorney's office and thereafter my work was solely with the district attorney's office.

I was on duty all day long. However, I was, during that period of time, permitted a very limited practice of law, completely excluding criminal law. It was just limited to private practice, and from 1950 to 1953, I was alone and it really amounted to nothing, and from 1953 until the day I was appointed as district attorney, I did have a law firm under the name of Cahn & Maxton. It was just a complete blank.

I just went blank as to those years in which Mr. Mzxton was the active individual. I participated very, very little because I did not have the time. My day was from 9:00 to 5:00 in the district attorney's office.

So, if I gave the impression that I did nothing else during those years, I'm sorry. It's just my mind went completely blank.

Q With respect to your tenure as district attorney and the various positions you held, please tell us what salaries you received in each of these stages?

A When I went into the office in 1950, my salary was $4,500 a year. That lasted for, I believe, two

years when it went to $6,000. That lasted for a year and then it went to $7,500. That lasted for two years and it went to $9,000. That lasted for a year or two and it went to $14,000.

Then in the early 1960's it approached $20,000 and when I first was elected district attorney in 1962, I believe it was slightly less than $30,000.

Then in 1968, I believe, the salary went to $37,500, and from 1971 until 1974, my salary was $45,000 a year.

Q Did you also have for your use an automobile and driver?

A Yes. The County provided an automobile, three drivers.

As a matter of fact--but one was mainly used and all of the expenses related to the automobile, insurance, everything.

Q Were there ever, for instance, benefits attached to your office?

A Retirement, Social Security.

Q Hospital insurance?

A Hospital insurance. All of the other fringe benefits that related to public service.

Q You have a family, Mr. Cahn?

A Yes.

Q Who is in it?

A I have a wife and three sons, Neil, Jeffrey and Lawrence, who is in New York Western University, in Chicago.

Q On this trip to Chicago, Mr. Cahn, which is reflected in Count One and Two to which you testified yesterday, did you visit with your son while you were in Chicago?

A You bet your life.

Q What did you do at this time?

A I saw him. He came down from Evanston. We had dinner and I believe he stayed over with me for that particular night.

Q Did that detract from the work you were undertaking to do in Chicago?

A No, it had nothing to do with it nor did the County pay for any part of it, his participation --

MR. DRUKER: I'm going to object again and ask if Mr. Cahn will stick to the questions asked of him.

The question was,"Did it detract from your work?" And he keeps testifying.

THE COURT: There is no claim with respect

to that, I might assume.

Q In respect to Count One --- Rount Two, you testified that you received a check for expenses from the National Center for Prosecution Management, and that you returned that money to the County of Nassau.

Did you retain any part of that for yourself?

A May I see Counts One and Two? I don't think that had anything to do with the National Center for Prosecution Management.

Q You're right, I'm sorry.

I'll withdraw that question.

The count relates to the National District Attorneys Association and the National -- I'm sorry -- permit me to withdraw the question and correct it.

Do you have Count One and Two before you?

A No, I don't.

(A document was handed to the witness by the Court.)

THE WITNESS: That's the indictment.

Q May I refresh your recollection, Mr. Cahn?

A No, I don't need it refreshed. It had to do with the college, the National College of District Attorneys.

Q In any event, corrected as you have now stated, did you receive or retain any of the funds that you received from that source?

A Yes, I believe I testified I kept $135 for myself, which was the honorarium, and I gave $135 to Joseph Spinnato which was his norarium.

Q Mr. Cahn, who did you intend to pay the expenses of that trip to Chicago?

A To Chicago?

Q Right.

A The National College of District Attorneys.

Q In your opinion, is that who did pay for the trip?

A Yes, sir.

Q With respect to Count Two, which was, which relates to Mr. Spinnato accompanying you, who did you intend to pay the expenses of that trip to Chicago?

A National College of District Attorneys.

Q In your opinion did the National College pay the expenses?

A Yes, they did.

Q Did the County pay the expenses?

A No, they didn't.

Q The funds that went to the County were

reimbursement of the County's advance; is that correct?

A The funds that the County gave to me, yes.

MR. DRUKER: I'm going to object again.

This is the Jury's domain as Mr. Cahn is testifying about.

I think that these are issues here --

THE COURT: Basically issues of law.

Whatever the defendant's intent may have been --

MR. BOGIN: Sorry to break in.

The defendant's intention is certainly --

THE COURT: The issue of law is when he tells the National College that the funds are not available from any other source, whether that is a false statement, if he can get the money from the County.

To that extent, I don't think his intent is material on Counts One and Two.

MR. BOGIN: Might we have a side bar?

THE COURT: Yes, all right.

(The following occurred at side bar.)

MR. BOGIN: I personally have not briefed this question, but I submit to your Honor, the subject matter is of critical important now, since the question of the defendant's fraudulent action is one

intent, if there is any fraudulent action at all.

I submit the defendant's intent as he testifies to it, is not the only material but quite critical to the elements of his defense.

I intend to require the defendant to testify on each case that he had no intent to defraud; that he did not willfully and knowingly or deliberately make any false statement.

If your Honor is going to rule that's a conclusion, I'm completely --

MR. DRUKER: If I may, Count One is not a fraud count. It just alleges Mr. Cahn knew that his representation was false when he said he was not being reimbursed by anybody else, and that funds were not available from any other source.

The evidence is clear that, number one, the County was ready, willing and able to pay for both his travel and informant.

Number two, that he was in fact having his travel expenses payd by the County.

The fact he wants to say, "I was doing it for a good purpose,"or anything, is totally irrelevant to Counts One and Three, and slightly for reasons County Four through Ten.

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MR. CAHN: Your Honor, that's a total inaccurate statement by Mr. Druker.

When Mr. Druker says that it is incombent upon the Government to prove that I knew the statement that I made to the National College was false, presumes that I had a state of mind, and, therefore, what my intent at the time and what my interpetation of what that particular certification means is of vital importance, plus the fact of the matter, may I respectfully bring to your Honor's attention, what Mr. Christ said, he would not have paid for me to lecture to the National College of District Attorneys; therefore, I think my state of mind, my intent, as to whether or not I certified incorrectly and deceitfully to the National College, that the monies were available from another source, is the foundaction of the case.

MR. DRUKER: Mr. Cahn missed the fact he's travelling on County business also, and Mr. Christ was -- the testimony -- he was paid the travel expenses when he was on County business and he would pay for an informant.

MR. CAHM: That's correct.

MR. DRUKER: It's irrelevant he had this other business.

MR. BOGIN: We already had testimony earlier in the case that --

MR. CAHN: Might I further point out, Mr. Christ also testified that when he came from another, money, he would expect repayment from the County and I submit that this isn't important insofar as my state of mind is concerned.

To make a false statement, your Honor, just the mere making of the false statement, if I truly believe that statement, it was not false. The Government has not proved that case.

As Mr. Druker has pointed out, it cannot be by accident, it can't be by mistake. It has to be knowing.

MR. BOGIN: By design.

MR. CAHN: By design, deceit.

Therefore, my state of mind, my intent --

MR. DRUKER: If the Court wants to find Mr. Cahn didn't know the two entities were paying him, that's about the only way they can acquit him, on that count.

THE COURT: It says, "willfully made a false

statement."

MR. BOGIN: "Knowingly and willfully made a false statement."

MR. DRUKER: The "willfully," he wasn't forced to do it.

"Knowingly" means he knew it was false.

MR. NEIL CAHN: That's right.

MR. CAHN: That's exactly the point. I knowingly and willfully knew it was false. So what was in my mind? What was in my mind?

MR. DRUKER: The appropriate question would be: Did you know the other entity was paying or did you think the County would pay for an informant and travel?

He is getting into the issues on Counts 11 through 46.

MR. NEIL CAHN: You are putting your interpretation --

MR. DRUKER: I'm going to ask counsel to direct his arguments to the Court and not to me.

THE COURT: It gets confusing when I have three counsel.

MR. BOGIN: If I may suggest, your Honor, Mr. Druker did not take issue with the introduction

of evidence yesterday as to the availability or non-availability of our funds.

I asked that question specifically and Mr. Cahn specified there were no other funds available.

Your Honor may remember we had agreed to certification.

MR. DRUKER: I objected to that. The benefit to his testifying --

MR. CAHN: Was admitted. His testimony was admitted.

MR. DRUKER: You made a statement. I took no issue with that testimony. I did take issue --

MR. BOGIN: Forgive my poor recollection. However, it is my distinct recollection that the Court admitted that testimony and I am simply making the assumption that will continue to be the Court's attitude.

MR. CAHN: May I submit wherever the question of deceit and fraud is concerned, the state of mind of the defendant is always a vital issue.

MR. DRUKER: These are not fraud counts.

THE COURT: As to whether it was false, and no other funds available to reimburse you for the

expense.

MR. CAHN: That's correct, sir.

If I believed there were no other funds available, then certainly that has something to do with whether or not I willfully and knowingly deceived or made a false statement.

MR. DRUKER: That's not the question asked and to which I objected. That would be properly aproper question.

THE COURT: What's the question?

MR. DRUKER: He was asked a whole different area, whether or not -- I can't remember, your Honor, but it was more related to what would be on the mail fraud count.

He was not asked what he stated now as to whether or not other funds were available.

MR. BOGIN: If your Honor will rule that testimony which Mr. Druker has just defined as admissible, we will go in that direction.

THE COURT: All right. We can do that.

MR. KRUKER: As to whether or not he thought the funds were available.

Again, I repeat the testimony as to having Mr. Cahn testify as to whether or not other

funds were available.

He is not competent.

MR. CAHN: I certainly am, the district attorney of that county.

MR. DRUKER: But not controller of Nassau County, the treasurer.

THE COURT: If other funds were available because -- well, I'll let him testify.

MR. CAHN: Whether they were available for that particular purpose, your Honor, is a totally different story.

Might I ask, sir, we had a question as to whether or not there was a concession that a report was made in Washington, D.C.

Mr. Druker said he would look it up.

MR. DRUKER: Again, your Honor, I concede, and if it is admissible I will stipulate that a report was made and filed.

THE COURT: You better. I will look at the record.

(The following occurred in open Court.

(Witness resumes the stand.)

JD fls.

(Continued on next page.)

SS:jd

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THE COURT: Ladies and Gentlemen of the Jury: The first count charges the defendant willfully and knowingly made and caused to be made a false statement in an application for reimbursement of air fare expenses that he was not receiving reimbursement from another source and no other funds were available for reimbursement for that expense. Since the word "willfully and knowingly" are in there, I'm going to let Counsel ask Mr. Cahn, although it is not binding on the government or on the jury, his view as to when he knew he was receiving other reimbursement, or other funds were available to reimburse for that expense. Now, you may proceed.

Q. Mr. Cahn, in reference to Count 1, would vou think there were other funds available to you to discharge the obligation - - I'm sorry, to discharge the cost of going to Chicago on the business of the National District Attorneys Association?

A. I did not think nor did I believe that other funds that county funds were available to go to Chicago to lecture to the National College of District Attorneys.

Q. Did you knowingly and willfully and deliberately make a false statement - -

MR DRUKER: I object for the same reason stated

previously.

THE COURT: He can ask it, but the answer is not binding upon anybody.

Q. I would like to repeat the question if I may. Mr. Cahn, did you knowingly and willfully make a false statement to the National District Attorneys Association in respect with the National District Attorneys Association made for that trip?

A. No, I did not.

Q. With respect to Count 2, Mr. Cahn, there has already been testimony that Mr. Spinnato examined you on that trip and the same procedure was followed. Did you believe there were any funds available to defray the cost of Mr. Spinnato's attendance at a meeting?

A. I did not so believe, nor did I know that any funds were available from the county to pay for Mr. Spinnato's trip to speak at the National College of District Attorneys.

Q. Did you knowingly or willfully cause or counsel or enduce Mr. Spinnato to make a false statement in respect to this transaction.

A. No, I did not.

MR. BOGIN: May I at this time interrupt and point out that we would like now to utilize this chart.

THE COURT: Yes, go ahead.

MR. BOGIN: And note the amount, if any on each of these occasions.

Q. In respect to Count 1 and 2, Mr. Cahn, you returned some money to the County, but did not put it in the S.H. Fund, you did not put any money in the S.H. Fund.

A. No sir, that is correct. I did not - - yes, I did not put monies into the S.H. envelope.

Q. You did not make any payment to Sam Houston?

A. When I saw him in Chicago? No large funds. I did give him some money.

Q. We come now to Count 3, Mr. Cahn.

MR. BOGIN: Might we have the exhibit, please?

(Documents are handed to Mr. Bogin by Mr. Druker)

Q I hand you government's exhibits 3 and 3A in evidence, Mr. Cahn. That represents a trip, does it?

(Handing to witness)

A. Yes, it does.

Q. Will you please tell us where, when and what time?

A. This was a trip on March 9, 1974, to a national conference sponsored by the National District Attorneys Association in Mexico City, Mexico. It was an international conference, actually. It was - - There was also a meeting

of the advisory board of the National Center for Prosecution management.

Q. Did the county have any obligations to pay any of those expenses?

MR. DRUKER: I object. Again, this calls for a conclusion that's within somebody else's sphere of competency.

THE COURT: That's a different form of question. I'll sustain the objection.

Q. Did you take an advance from the prosecution fund for that trip, Mr. Cahn?

A. No, I did not. I was not permitted.

Q Would you explain why?

A. Yes. This had nothing to do with an investigation and there had been discussions and problems between - - not really a problem - - discussions between the District Attorney, the County Controller, and the State Controller as to whether or not an advance from the prosecution fund could be taken purely for the purpose of attending a conference.

MP:em
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MR. DRUKER: I am going to object unless Mr. Cahn was present at these discussions.

THE COURT: He said between the County District Attorney, County Controller and State Controller.

Were you present during the discussions with the State Controller?

THE WITNESS: No, only with the County Comptroller.

THE COURT: Tell us about that.

THE WITNESS: The County Comptroller advised that the prosecution fund, an advance from the prosecution fund was improper when there was a trip that did not involve an actual investigation.

Funds were not available if it was just to attend a conference. And the conference could only be attended and a county voucher submitted only after permission from the county executive was obtained to attend that conference.

The trip also included, thereafter but during the same period of time, a meeting of the National Center for Prosecution Management.

Now, I didn't know that until after I got there.

Q by the way, just to clarify the situation,

you spoke a moment ago about drawing an advance from the prosecution fund and there was talk about a county fund. I would like the jury to know the difference.

A The prosecution fund and the county investigation fund -- it was all county money.

Each year a budget is submitted to the Board of Supervisors and the County Executive for approval to run the entire office of the District Attorney.

As part of that budget, an estimate has to be given as to how much approximately would be spent for investigations during the entire year. That could run up to 150, 160, 170 thousand dollars.

In addition to that investigation fund, there was this prosecution fund which was the checking account of the District Attorney. But they were all county funds. And when an advance was taken from the prosecution fund the advance is taken from the county.

The method of the advance is through the writing of the check on the prosecution fund. And the County is still the one who is given the advance.

When the comptroller reimburses the prosecution fund it comes out of the general investigation fund. The advance still exists, but the investigation fund is taken care of, because as I tried to explain, it was intended to

keep to that $7500 as much as possible. But the advance was still open through the County. But the money to replenish the prosecution fund came from the general investigation fund from the County.

So it was taking it from the right-hand pocket and putting it into the left-hand pocket and the County was the one advancing the money.

Q Now, you attended the Board meeting. Did you subsequently discuss with the County Executive whether or not the County would disburse these expenses for you?

A Prior to -- it's not part of the exhibit -- but prior to the trip permission had to be received from the County Executive to go on a conference. And written permission was given to go on the trip for the National Convention, not for the Board Meeting of the National Center for Prosecution Management.

Q W ill you please read the certification?

A "The above information" -- on Government's Exhibit 3-A?

Q Yes.

A "The above information is true and accurate to the best of my knowledge, and I am not receiving dual compensation."

Q Did you receive dual compensation?

A I didn't receive any compensation .

MR. DRUKER: I object. Again, that is a jury question unless the question is asked in a different way.

THE COURT: I think the word "compensation" comes after a list of expenses and the jury should be informed of that. That I think is Mr. Druker's objection.

MR. DRUKER: Yes, your Honor.

Q I draw your attention to the word "compensation." Did you receive dual compensation? Did you receive any compensation?

A I received no compensation, I received expenses.

Q How much, by the way, of expenses did you receive?

A There are crossouts on this, $386.80.

Q Does that include some per diem allowance?

A Yes.

Q You notice there is a per diem change of 25 to 40 dollars on that voucher, is that correct?

A Yes.

Q Did you make the change on that voucher?

A No, sir.

Q Do you know who did?

A The National Center for Prosecution Management.

Q Did you ask them for any per diem allowance?

A On the top of Government's Exhibit 3-A, it reads: "In accordance with LEAA allowance, travel expense and per diem allowance of $40, $25 a day are authorized for reimbursement."

Per diem, I put down per diem allownace of $25 per day. They crossed it out thereafter, after they received this claim form from me, they crossed it out and made it $40 in two places.

MR. DRUKER: To save time, the Government will agree there is absolutely no contention nor any evidence that Mr. Cahn did anything improper with regard to the per diem on any of the claims.

MR. BOGIN: Would you also concede, Mr. Druker, per diem allowance is a standard matter and it does not require vouchers?

MR. DRUKER: It does not have backup vouchers. It may require a signature but not documentation of any kind. It's a standard amount paid to government travelers.

MR. BOGIN: I would rather do this at sidebar.

MR. DRUKER: If you want to ask me on the side, it will be all right.

(Pause while attorneys confer.)

MR. DRUKER: Further, the Government stipulate there is no requirement that Mr. Cahn or any other traveler actually demonstrate he expended the money in order to get per diem. He gets it as a matter of course.

Unless there is any evidence in the case to the contrary in specific instances, as a general rule.

MR. BOGIN: I will accept a stipulation.

Q You did get a check for your expenses, Mr. Cahn, did you not?

A From the National Center?

Q Yes.

A Quite a lengthy time after the meeting, yes.

Q Do you want to describe that or tell us about it?

A When I got down to Mexico City, I had a discussion with either Joan Jacoby, who is the one in charge of the National Center for Prosecution Management, or Preston Trimble, or both, who was the District Attorney for Norman, Oklahoma and chairman of the Advisory Board.

They told me they were going to try to get the National Center for Prosecution Management to pay for the expesnes of the trip to Mexico, but didn't know whether or

not they could since it was out of the Continental limits of the United States.

They advised me to put in a claim. If it was paid, fine; if it wasn't paid, fine, too.

Q Did you put in a claim?

A Yes.

Q Eventually, did you receive payment?

A I put in a claim March 25, I got the check I would say, around May 21.

Q What did you do with the proceeds of thecheck?

A Gave it to Gladys and told her to redeposit the check into the County.

Q Do you know what happened after that?

A Only what Gladys told me, and what does she testify here.

Q Will you repeat it.

MR. DRUKER: If the question was, do you know what happened here -- I think it's explicit from the answer that he doesn't know other than hearsay.

THE COURT: If we had Mrs. Masten's testimony on it, I guess we ought to leave it at that.

Mr. Cahn wants to be asked whether he got it or put it into the Sam Houston fund.

MR. NEIL CAHN: May we have a sidebar on this?

THE COURT: No. One counsel is enough on one witness.

Q Mr. Cahn, did you retain those funds?

A No, I didn't receive any portion of these funds.

Q Now, once again, Mr. Cahn, will you please read the certification on that voucher?

A "The above information is true and accurate to the best of my knowledge and I am not receiving dual compensation."

Q Did you knowingly, willfully, deliberately or intentionally make a false statement with respect to that voucher?

A I did not.

Q Was there any money contributed or deposited into the Sam Houston fund as a result of that trip?

A None whatsoever.

Q Were there any monies paid Sam Houston?

A I didn't see Sam Houston in Mexico City.

Q One further question with respect to count three: Was your wife with you?

A In Mexico City?

Q Yes.

A Yes.

Q Who paid for her?

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A I did. The County did not.

(Pause.)

2/2 Q Mr. Cahn, I show you Government's Exhibits 4 and 4-A in evidence.

This relates to count four of the indictment, does it not?

A Yes, it does.

Q From those documents before you, can you tell us when and where that trip took place and what the substance of it was?

A The trip took place May 2, 1971, and it went to San Francisco, California; Reno, Nevada in reference to the jail investigation which at that time was being conducted by the Nassau County District Attorney's office. And it also involved a trip on behalf of the National District Attorneys' Association. From the exhibit it indicates that I ran a drug conference in San Francisco.

Q Do you recall who accompanied you on that trip?

A (No response.)

Q There is a memorandum before you from which you can refresh your recollection.

A Well --

Q If I were to tell you Edward Curran, would that refresh your recollection?

A Nobody from my office accompanied me, but now that you mention it, Chief of Detectives Edward Curran accompanied me on behalf of the Nassau County Police Department.

Q Was that in reference to the jail investigation?

A Yes, it was.

Q Will you develop the jail investigation for us, tell us what it is all about?

THE COURT: We had some of that yesterday.

MR. BOGIN: Maybe.

THE COURT: I think you're getting repetitious.

MR. BOGIN: If I may just go a bit --

THE COURT: Answer it briefly.

A Again, there were quite a number of complaints from inmates about brutality in the jails.

There were complaints about narcotics being smuggled into the jails.

T here were complaints about unrest in the jails by destruction of beds, fires being set to mattresses, and this had come up before, only this particular time it was my intention -- and I sought permission from the County Executive to hire a private detective agency and have undercover agents go into the jail allegedly charged with certain

crimes, stay there for varying periods of time. If I remember correctly, approximately fifteen men and five women went in, black, white.

Prior to that, I received a call from the administrative judge of the County Court of Nassau County, complaining to me about complaints he had received in reference to the treatment of prisoners in the Nassau County jail.

I didn't want to use law enforcement officers, I thought probably they would not be as objective as I wanted them to be --

MR. DRUKER: Can the witness stick to what he did rather than to what he thought?

THE COURT: We had a few new things but most of this is repetitious.

MR. BOGIN: I quite agree. I wanted to keep it in context with respect to the counts. However, I will abide by your Honor's ruling.

THE COURT: Next question.

Q Just a moment to bring it to an intelligent conclusion. Mr. Cahn, see if you can finish the definition of the jail investigation?

A Therefore, as we -- we use private investigators, no inmates, no former inmates, no law enforcement personnel.

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And the private investigation firm we used came from San Francisco, California. Trips were made to various sections of the country to interview these people in an attempt to get them to sit in the Nassau County jail for varying periods of time. It wasn't easy, everybody just didn't want to go to jail.

Q Was that the purpose of the trip to San Francisco with respect to count four?

A With Chief Curran, yes.

Q Did you submit a claim for your -- withdrawn.

Did you take an advance from the County?

A Yes.

Q Did you later submit a claim to the County for the County's portion of the expense of the trip?

A I submitted a claim to the County for replenishment of the prosecution fund.

Q Was the payment by the County used for the replenishment of the prosecution fund to your knowledge?

A Yes.

Q Did you also submit a claim to the National District Attorneys' Association for reimbursement of your travel expenses for the drug conference?

A Yes, I did.

Q What form did the claim take?

A Just from Government's Exhibit 4-A, unless there is something else, just a letter. This is the letter I did send and sign.

Q That is in evidence?

A Yes, Government's Exhibit 4-A.

Q Who did you intend to pay the expenses of your trip for the attendance at the National District Attorneys' Association?

A I intended the National District Attorneys' Association to pay the expenses of the trip.

Q Did they so do?

A I received a check for expenses of that trip.

Q How did you deal with the check which you received from the National District Attorneys' Association?

A I returned it to the County for the advance.

Q How was that accomplished?

A By placing it into the SamHouston envelope fund and holding it.

Q Didyou have the check cashed?

A The check was cashed.

Q You placed the cash in the SH envelope?

A Yes.

Q Was that consistent with your plan to develop a Sam Houston fund as you testified earlier?

MR. DRUKER: Objection.

THE COURT: Objection sustained.

MR. DRUKER: Mr. Bogin is the witness.

THE COURT: Objection sustained.

Q Now, on this trip did you and Chief Curran go anywhere else?

A Other than San Francisco?

Q Yes.

A Yes.

Q Where did you go?

A Reno, Nevada.

Q What was your purpose in going to Reno, Nevada?

A Same purpose.

Q Did you submit a hotel bill to the County of Nassau for your stay in San Francisco?

A Yes, sir.

Q And for your stay in Reno?

A Yes.

Q How were these bills paid by you?

A Cash.

Q Mr. Cahn, will you please define the reason why you paid hotel bills in cash and how it came to pass?

A I took the advance from the prosecution fund for that particular purpose. In most instances I would pay

these expenses in cash. There were times when I used the American Express which I didn't particularly care to use. There were times I used it when I thought I might run short of money.

Q In San Francisco, at the Conference of National District Attorneys, where did you stay?

A I stayed at the Mark Hopkins.

Q Where was the conference held?

A (No response.)

Q Are you having trouble remembering?

A I believe it was the Jack Parr Hotel.

Q Was there a reason for your staying at one place while the conference was at another?

A Yes. In most instances I try to stay at a different hotel because of the possibility of meeting Sam Houston.

Q On this occasion, did you see Sam Houston?

A (No response.)

Q Will it help to refresh your recollection if you looked at the affidavit?

A I am looking.

(Pause.)

A No, I don't believe I did.

BY MR. BOGIN:

Q You have before you, Mr. Cahn, your case sheet relative to the period of May 3rd and 4th, 1971.

A It does not indicate I met Sam Houston. That's Defendant's Exhibit L.

Q Do you recall how much you deposited to the Sam Houston fund as a result of this trip?

A Yes.

Q How much was that?

A $511.

Q Did Mr. Cahn in respect to this count, did you knowingly or willfully or intentionally, fraudulently withhold or fail to disclose any material fact to the National District Attorneys Association?

A No, I did not.

Q I show you Government's Exhibit 5 and 5-A in Evidence.

These exhibits represent a trip, do they not?

A Yes, sir, they do.

Q When was the trip taken and where was it and what can you tell us about it?

A Well, the trip was taken to Chicago, Illinois, and Houston, Texas, on May 30th, 1973, on behalf of the

County in reference to Rackets Bureau case 4406.

I don't remember what particular case that number refers to. I was accompanied on that particular trip by Assistant District Attorney Joseph Spinnato and Detective Sgt. John Lang.

I also went to Chicago for the National Center for Prosecution Management as a member of the Advisory Board.

Q Do you ever remember what Case 44-6 was about?

A No, I just said I have absolutely no recollection.

Q Did you submit a claim to the National Center?

A Yes, sir, I did.

Q What form did the claim take; is it a claim form?

A Yes, it's a claim form that was prepared and given to me by the National Center for Prosecution Management.

Q Did you sign the form?

A Yes, that's my signature.

Q Did you read it before you signed it?

A No.

Q Did you ask in this form for reimbursement of your airfare to Chicago?

A The exhibit so indicates, yes, $123.27.

Q Did you receive any additional monies from the National Center?

A Yes, they computed the per diem computation.

Q How much was that?

A They computed it as $68.75.

Q Did you receive those monies?

A A total of $192.02.

Q When you received that check, Mr. Cahn, what did you do with it?

A I had it cashed and paid the advance back to the County.

Q How did that -- what form did that take?

A By placing it in the Sam HOuson envelope and holding it.

Q Did you make certification to the National Center?

A On this form, I see no certification at all.

Q How did you pay your hotel bill, Mr. Kahn, in this case?

A This time it appears I was paid by American Express.

Q Was there any special reason for that?

A If there was, I don't remember.

Q Now --

A May I correct that?

It appears -- my American Express card appears on the hotel bill, but, Mr. Bogin, very often that's used strictly for identification.

I will assume I paid it by American Express.

Q To the best of your recollection.

A To the best of my recollection and because this stamp appears on the copy of the hotel bill submitted.

Q Do you happen to recall whether you travelled coach or first class on this trip?

A First class.

Q The request for reimbursement to the agency represented what?

A Pardon?

Q I say, the request for reimbursement to the agency represented what?

A Coach fare.

Q Did you also submit a claim to the County of Nassau for any reimbursement on this trip?

A I submitted a claim for me, for Mr. Spinnato and Detective Sgt. John Lang for this trip.

Q Was that reimbursed?

A (No response.)

Q Was that part of the expense reimbursed by the County?

A The Prosecution Fund was reimbursed, yes.

Q Who did you intend to pay the expenses of the trip to Chicago; where in relationship to the work for the agency?

A For me, the National Center for Prosecution Management.

Q And in your opinion, is that what happened?

A Yes, sir.

Q Mr. Cahn, in respect to Count Five, did you knowingly, willfully, deliberately or, in your opinion, fraudulently omit or conceal any material fact or matter relevant to this trip to the agency involved?

A No, I did not.

THE COURT: Let me see that exhibit, please.

(Two documents handed to the Court by the witness.)

THE COURT: The witness wants a side bar.

(The following occurred at side bar.)

MR. KAHN: Your Honor, as you well know, this is a bit awkward. We want to be as accurate

as possible.

This was prepared -- this was wrong, "Paid to Sam Houston," because, however, on this particular trip I did see Sam Houston and paid him $750, and I don't know how you would want me to bring that out.

THE COURT: Mr. Bogin will ask you.

MR. CAHN: He did not. That was the point.

MR. BOGIN: I don't have that information.

MR. DRUKER: While we're at side bar, the Grand Jury which returned the original indictment has this day signed a statement of amendment and without going into the merits of this thing, I wanted to know whether or not --

THE COURT: This changes --

MR. DRUKER: We wanted to know whether or not your Honor wanted to handle this or the miscellaneous judge.

THE COURT: I will determine.

MR. DRUKER: Should we hold the Grand Jury to await your Honor's pleasure?

THE COURT: We will hold them until 11:30 and then we will have a recess.

(The following occurred in open Court.)

BY MR. BOGIN:

Q You still have Government's Exhibit 5 and 5-A?

A Yes, sir.

Q Did you see Sam Houston on this trip?

A Yes, sir, I did. I saw Sam Houston with Mr. Spinnato in Houston, Texas, on May 31st.

Q Did you give him any money?

A Yes, I did.

Q How much did you give him?

A $750.

Q Mr. Cahn, I'm going to go into Count 6.

I show you Government's Exhibit 6 and 6-A, and ask you to tell us what trip that represents in terms of date, time and purpose.

(Handing to witness.)

A This is a trip dated September 23, 1973, to Los Angeles, California, which I was accompanied by Assistant District Attorney Joseph Spinnato and Detective Sgt. John Lang in reference to a Vice Squad investigation, 3-18-72, which involved -- that I remember.

It involved an international selling of young boys in a homosexual ring and RB22-28, that I don't remember.

Q Did you also travel on behalf of the National Center for Prosecution Management on that trip?

A Yes, I did. There was a meeting of the board on September 25th, in Los Angeles, California.

Q Had you taken an advance from the County of Nassau for the trip?

A Yes, I did.

Q It was property from the Prosecution Fund?

A Yes, I did.

Q Did you submit a claim to the County of Nassau for reimbursement for any part of it?

A I submitted a claim on behalf of Assistant District Attorney Joseph Spinnato, Detective Sgt. John Lang and myself to replenish the advance taken from the Prosecution Fund.

Q Did you submit a claim to the National Center for my expenses.

Q How much was that claim?

A I submitted the claim for $337.27 and they computed eight quarters at six and a quarter for $50.

Q Were those --

A On the basis of a letter, two days expenses. I sent the letter. The total I received is $387.27.

Q What did you do with the check?

A Cashed that check and deposited it in the Prosecution Fund.

Q Are you sure --

A Deposited in the Sam Houston Fund, excuse me.

Q Who did you intend, Mr. Cahn, to pay the expenses of your trip for attending the meeting of the National Center?

A My expenses, I intended the National Center for Prosecution Management to pay.

Q Did they so do, in your opinion?

A Yes, sir.

Q Have you made any certification on this claim form?

A I see no certification on Government's Exhibit 6-A.

Q Mr. Cahn, did you knowingly or willfully or fraudulently, in your opinion, conceal or cause to be concealed from the National Center any material fact relevant to this transaction?

A No, I did not.

Q Did you see Sam Houston on this trip?

A No, I did not.

Q I show you, Mr. Cahn, Government's Exhibit 7-A in Evidence.

(Handing.)

This relates to Count 7 of the indictment.

From examining the documents, will you please tell us the date, the place and circumstances of that trip?

A This trip took place August 2, 1972, to Los Angeles. I was accompanied by Assistant District Attorney Robert Roberto. This was on that international homosexual ring, the vice squad case in Los Angeles, and I also attended a meeting of the National Advisory Commission on Criminal Justice, Standards and Goals, the one that we commonly refer to as the Task Force.

Q Had you taken an advance from the County for the expenses of this trip?

A Yes, I did.

Q From the Prosecution Fund?

A Yes, I did.

Q Did you later submit a claim to the County for your travel expenses for reimbursement?

A No, I submitted a claim to the County to replenish the Prosecution Fund on my behalf, the expenses for Mr. Roberto were paid by the County.

Q Did you submit a claim to the Task Force for reimbursement of your expenses?

A Yes, I did.

Q How much was the claim you originally submitted?

A I would say $376. From Government's Exhibit 7-A that was the total cost claimed, although that's not in my handwriting.

Q Do you happen to remember how much your original claim was?

A I would presume it was $326 for the airfare plus the two days at $25 -- $50, $376.

Q Was it per diem, the additions supplied by you --

A I can't tell, Mr. Bogin. There are two different typewriters here.

Q Does the claim form contain a certification, Mr. Cahn?

A Yes, sir, it does.

Q Did you read it before you signed it?

A No.

Q Is the reason why you didn't read it the same as those you described to the Jury earlier in your testimony?

A They were just part of papers handed to me,

yes.

Q Have you read it recently?

A Yes.

Q By the way, is there anything there that stated anything about dual reimbursement or dual compensation?

A Not on the certification, no.

Q Did you have a conversation with Commander Hoy about your county bysiness when you attended a meeting of the Task Force?

A Yes, sir, I did.

Q What was the conversation?

A I told him why we were in San Francisco in reference to this particular case because it was rather interesting.

Q Did he ask you whether the County of Nassau was to retain any part of the cost of that trip?

MR. DRUKER: I'm going to object.

Can he be asked what was said and by whom, rather than Mr. Gobin testifying?

THE COURT: We have a long conversation. I will let the question stand.

The witness may answer.

A The answer is no.

Q Did you receive reimbursement from the Task

Force?

A Yes, I did.

Q In the form of a check?

A I see a copy of a check here, yes.

Q How much was that?

A $376.

Q What did you do with the check?

A Had it cashed.

Q What did you do with the cash?

A I deposited it to the -- repaid the County of Nassau for the advance.

Q Where did you deposit it?

A In the Sam Houston Fund.

Q Did you see Sam Houston on that occasion?

A No, I did not.

Q Mr. Cahn, with respect to the payment from the Task Force, did you knowingly, willfully, or in your opinion, fraudulently conceal or cause to be concealed any material fact which would be relevant to this transaction?

A No, sir, I did not.

THE COURT: Let me see that.

(Document handed to Court by witness.)

THE COURT: Maybe we will take our morning

break.

MR. BOGIN: I was about to ask you.

THE COURT: The Jury is to go back to the Jury room.

Please don't discuss the case

Counsel will wait a few minutes.

(Jury leaves the Courtroom.)

THE COURT: Mr. Druker, is the Grand Jury outside now?

MR. DRUKER: I believe so, your Honor.

THE COURT: Bring them in and let them sit on my right and the people who are on that side of the Courtroom, please move.

(Grand jurors enter Courtroom.)

THE COURT: Mr. Druker, do you have the amendments? Is the foreman here?

(Grand Jury foreman approaches the bench.)

MR. DRUKER: Mr. Sanders was the foreman, your Honor, with an original and one.

(Document handed to the Court by the foreman.)

THE COURT: I see 19 Grand jurors here or is that 19 plus the foreman?

THE FOREMAN: Twenty all together.

Are these the same Grand jurors who handed up the indictment, 75 CR 645, Mr. Druker.

MR. DRUKER: Yes, it is, the same jurors.

THE COURT: January, 1975, Special Grand Jury.

MR. SANDERS: Right.

MR. DRUKER: 645 and 645 (S).

THE COURT: You're Mr. Sanders?

MR. SANDERS: Yes.

THE COURT: This purports to amend the last sentence in Counts 1 and 2, and inserts the word "District," in the phrase, "District Attorneys" in part of Count 2.

It appears to be in proper form. It's been handed up in open Court. It's signed by the foreman and the United States attorney, Mr. Trager.

I will receive it.

Have the clerk docket it and I will hear counsel in five minutes about the matter.

Thank you, the Grand Jury is excused.

(Recess taken.)

MP fls.

(Continued on next page.)

MP/em
4/1

THE COURT: Let me hear first -- where is Mr. Bogin?

(Pause.)

THE COURT: I hadn't ruled yet on the motion with respect to Counts 1 and 2. I am not sure what the effect of the Grand Jury amendment is.

Mr. Bogin, do you want to say anything about it?

MR. BOGIN: I think Mr. Cahn would rather address you, your Honor.

MR. CAHN: Your Honor, we are now in the midst of a trial based upon an indictment that has been handed down by a Grand Jury which I presume has been duly convened within the Eastern District of New York during the course of that trial. I think it is basic law that the Government cannot use that Grand Jury to perfect an indictment and then go ahead, and any reference to any action by a Grand Jury with particular attention to specific counts within the indictment upon which a defendant is being charged being brought to the attention of the trial jury -- I think that basically is a ground for the withdrawal of a juror and a mistrial.

MR. DRUKER: We are not asking -- I agree with that. I don't think we should have that brought to

the attention of the jury.

THE COURT: What is the function of it?

MR. DRUKER: Your Honor, I think my own feeling is, number one, the documents which were presented to the Grand Jury in support of counts one and two of the indictment were the exact same documents that are now one and two and 1-A and 2-A. And all of the evidence was in accord with what this amendment is. I think it is almost surplusage. This is what the indictment is supposed to read --

THE COURT: It seems to me, although I haven't taken time to take it up with counsel, that the choice of names in the particular count in a long indictment would be governed by the same thing I always say, that the Government does not have to be precise in its proof with respect to dates and amounts and consequently this was not a ground for dismissing the indictment on lack of proof.

I would suppose that if it were a fatal variance, there might be a real question whether the Government can change the indictment in the middle of the trial.

MR. DRUKER: If it is a fatal variance --

THE COURT: If it is not -- you say it is

almost surplusage -- if it is not going to be brought to the attention of the jury, I don't know what function it has, perhaps to persuade the Court that this is --

MR. DRUKER: I think that that is what it is intended to do. Count four reads date of claim, May 17,1971. That is a typo, it should be May 6, 1971.

Again, that is something that is on or about and that can be amended.

I submit what happened in counts one and two is the same exact thing, that was just an error, probably on the typist's part.

THE COURT: When I come to read the indictment, you are not asking I read the amended indictment?

MR. DRUKER: No, I am not asking your Honor to read that document to the jury. I would ask that the indictment be read to them as it was intended to be.

THE COURT: What do you mean, as it was intended to be?

MR. DRUKER: That the words "National College of District Attorneys" be substituted for National

District Attorneys Association, or in the alternative, just an explanation be rendered that it is for the jury to decide whether this is a typographical error or not; then whether the proof is in accordance with the elements in the indictment.

MR. CAHN: There is no question that I concede where there is a variance as to the date, no question that this is a variance which indicative of a typographical error and can be corrected by amendment. But in count one and count two, the very heart of the charge, the very specifics, basic foundation upon which this charge is based is that the individual agency to which allegedly a false claim was made was funded by LEAA, and I submit to you that counts one and two in reference to those particular charges do not state a crime. Because the National District Attorneys Association was not funded by LEAA.

THE COURT: That is contrary to the evidence here.

MR. CAHN: Pardon me?

THE COURT: That is contrary to the evidence here.

MR. CAHN: Sir, I am -- with all due respect,

without trying to contradict, the evidence where the fund, NDAA was concerned, was to specific allegations in other counts of the indictment. Primarily, NDAA was not funded by --

THE COURT: The director said it was 95 per cent LEAA and 5 per cent private.

MR. CAHN: Mr. Healy?

THE COURT: Yes.

MR. DRUKER: Mr. Paterri in the National College.

MR. CAHN: I think you referred to the National College.

THE COURT: The National College was 75 per cent LEAA and 25 per cent other sources.

However, as long as we are not going to bring it to the attention of the jury today, I will await whatever requests to charge there may be with respect to this and rule at that time.

Let's bring them back in.

MR. CAHN: Pursuant to my request, may I ask that my testimony be interrupted to permit the administrative judge to testify?

THE COURT: Is he here?

MR. CAHN: Yes.

THE COURT: Fine. Bring them in.

(The jury is in the jury box.)

THE COURT: I am sorry for the delay. I took a little time because I wanted to review and sign a memorandum in another case that people have been waiting for.

We are now ready to proceed. But I have agreed to let Mr. Cahn's testimony be interrupted for a character witness.

Mr. Neil Cahn, will you call him.

A L F R E D S. R O B B I N S, a witness called herein, was sworn by the Court and testified as follows:

DIRECT EXAMINATION

BY MR. NEIL CAHN:

Q Judge Robbins, what is your present position?

A I am the presiding and administrative judge of the District Court of Nassau County.

Q What other positions have you held?

A Prior to the present position, I was a trial judge ofthe District Court. Prior to that I was assistant district attorney of Nassau County in the office of Mr. Cahn.

Q So you know the defendant William Cahn?

A I do.

Q How long have you known him?

A Approximately twelve years.

Q In that twelve-year period, have you had occasion to discuss his reputation for truthfulness with members of the community?

A I have.

Q Do you know that reputation?

A I do.

Q What is William Cahn's reputation for truthfulness?

A Excellent.

MR. NEIL CAHN: No further questions?

THE COURT: Mr. Druker?

MR. DRUKER: Yes, your Honor.

CROSS-EXAMINATION BY MR.

BY MR. DRUKER:

Q Judge Robbins, in the course of these conversations did it come up or had you heard that Mr. Cahn went to witnesses during an investigation to try to get them to falsify stories to back him up?

Had you heard that at all?

A Just a minute. You are asking two questions. Did I hear that allegation or did I have conversations with people with regard to that at the time they were talking --

Q Either one.

A I have had conversations with people with regard to the allegations that I read about in this case. Yes, I have.

Q What I am asking, have you heard or had you heard that Mr. Cahn went to witnesses and tried to get them to falsify stories to back him up in this case?

A I must repeat, I heard about it by reading the allegations in the newspaper. To that extent, I've heard about it.

Q Having heard that, is it still your testimony Mr. Cahn's reputation for truthfulness is excellent?

A That is correct.

Q Judge Robbins, do you have any personal knowledge with regard to the charges in this case as to whether or not Mr. Cahn was committing fraud or making false statements to any federally funded agency?

A No, other than again what I read in the paper.

MR. DRUKER: Thank you, sir.

MR. NEIL CAHN: No further questions.

THE COURT: Thank you, Judge Robbins.

(WItness excused.)

W I L L I A M C A H N, the defendant herein, resumed the stand and further testified as follows:

THE COURT: Mr. Bogin, you may resume.

Cahn - direct

MR. BOGIN: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. BOGIN (Cont'd):

Q Now, Mr. Cahn, I think you testified about count seven. I will show you Government's Exhibits 8 and 8-A.

MR. BOGIN: Is your Honor finished with this?

THE COURT: Yes.

MR. BOGIN: Thank you.

(Pause.)

Q Looking at Government's Exhibit 8 and Government's Exhibit 8-A, can youtell us whether that represents a trip?

A Government's Exhibit 8 indicates a trip to Houston and Los Angeles.

Q Do you have the date?

A Yes. It indicates a trip to Houston and Los Angeles, in which I was accompanied by Assistant District Attorney Joseph Spinnato and the investigation involved the vice squad case to which I referred and a rackets bureau case, 443, and I don't have a recollection of what that specific rackets bureau case was about.

However, there is also another claim attached to Government's Exhibit 8 for a trip to Colorado Springs

to attend the National Conference of National District Attorneys pursuant to County Executive approval. For me, that is. It is attached to this claim.

And Government's Exhibit 8-A indicates a trip to Los Angeles, California, to participate as a member of the Advisory Board of the Task Force previously described.

Q Did you also go to Houston on that trip?

A Yes.

Q And Colorado Springs?

A Houston, Los Angeles, and from Los Angeles to Colorado Springs.

Q Who accompanied you on that trip?

A Mr. Spinnato, my wife, and Mrs. Spinnato.

Q Did Mrs. Spinnato or your wife participate in any of the investigations or any of the meetings?

A No, except in Colorado Springs.

Q They were along at the Convention in Colorado Springs?

A Yes.

Q Had you taken an advance from the County for the expenses of the trip?

A For the trip to Houston and Los Angeles, not for the trip to Colorado Springs.

Q Did you submit a claim to the Police Task Force

for your expenses for the trip to Los Angeles?

A Yes, sir, I did.

Q Is that claim before you?

A Yes, sir, it is.

Q Is there any certification?

A Yes, there is.

Q Did you read the certification before you signed it?

A No.

Q Did you sign it?

A Yes.

Q The reason for not having read it is the reasons you gave?

A There were fifty or a hundred claims put before me by Gladys for me to sign.

Q Is there anything in the claim form which relates to dual compensation or dual reimbursement?

A No, sir, there is not.

Q Did you receive reimbursement from the Task Force?

A I received reimbursement from the Treasurer of the United States.

Q Is that a check from the Treasurer?

A Appears to be.

375—Affidavit of Service

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UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

UNITED STATES

VS

WILLIAM CAHN

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF NY , ss:

BERNARD S. GREENBERG being duly sworn,

deposes and says that he is over the age of 21 years and resides at 162 E. 7th St NY, NY

That on the 1sty day of October, 1976 19 at

he served the annexed appendix; appellant's brief and exhibit volume upon

David Trager, U.S. Attorney, 225 Cadman Plaza, Brooklyn, NY 11201

in this action, by delivering to and leaving with said attorneys

two copies of the brief and appendix and one of the exhibit volume true cop thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said

Deponent is not a party to the action.

Sworn to before me, this 1st
day of October, 1976 19

Bernard S Greenberg

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 19